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Human rights situations that require the Council's attention

Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea[*]

Summary

The present document contains the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea. The Commission's principal findings and recommendations are provided in document A/HRC/25/63.

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[*] The information contained in this document should be read in conjunction with the report of the commission of inquiry on human rights in the Democratic People's Republic of Korea (A/HRC/25/63)

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Acronyms

ACF	Action contre la Faim (Action against Hunger)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
DPRK	Democratic People's Republic of Korea
FAO	Food and Agriculture Organization of the United Nations
HRNK	Committee for Human Rights in North Korea
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICNK	International Coalition to Stop Crimes against Humanity in North Korea
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICRC	International Committee of the Red Cross
KBA	Korean Bar Association
KCNA	Korean Central News Agency of the Democratic People's Republic of Korea
KINU	Korea Institute for National Unification
KPA	Korean People's Army
KWAFU	Korean War Abductees' Family Union
KWARI	Korean War Abductees' Research Institute
LFNKR	Life Funds for North Korean Refugees
MPS	Ministry of People's Security
MSF	Médecins Sans Frontières (Doctors Without Borders)
NGO	Non-governmental organization
NHRCK	National Human Rights Commission of Korea
NKDB	Database Center for North Korean Human Rights
NKHR	Citizens' Alliance for North Korea Human Rights
PDS	Public Distribution System
POW	Prisoner of War
ROK	Republic of Korea
SSD	State Security Department
UNHCR	Office of the United Nations High Commissioner for Refugees
USA	United States of America
WFP	World Food Programme
WHO	World Health Organization
WGEID	Working Group on Enforced and Involuntary Disappearances

I. Introduction

1. On 21 March 2013, at its 22nd session, the United Nations Human Rights Council established the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (DPRK). Human Rights Council Resolution 22/13 mandated the body to investigate the systematic, widespread and grave violations of human rights in the DPRK, with a view to ensuring full accountability, in particular, for violations that may amount to crimes against humanity.[1]

2. Among the violations to be investigated were those pertaining to the right to food, those associated with prison camps, torture and inhuman treatment, arbitrary detention, discrimination, freedom of expression, the right to life, freedom of movement, and enforced disappearances, including in the form of abductions of nationals of other states.

3. On 7 May 2013, the President of the Human Rights Council announced the appointment of Michael Kirby of Australia and Sonja Biserko of Serbia, who joined Marzuki Darusman of Indonesia, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, to serve as the members of the Commission of Inquiry on Human Rights in the DPRK. Mr Kirby was designated to serve as Chair. The Commissioners, who served in a non-remunerated, independent, expert capacity, took up their work the following month. The Commission of Inquiry was supported by a Secretariat of nine experienced human rights officials provided by the High Commissioner for Human Rights. Once appointed, however, the Secretariat worked independently of the High Commissioner for Human Rights.

4. This report builds upon the oral updates which the Commission of Inquiry provided in accordance with Resolution 22/13 to the Human Rights Council in September 2013 and to the United Nations General Assembly in October 2013.

5. The Commission implemented the mandate entrusted by the Member States of the Human Rights Council bearing in mind the Council's decision to transmit the reports of the Commission to all relevant bodies of the United Nations and to the United Nations Secretary-General for appropriate action.

II. Mandate and methodology of the commission of inquiry

A. Origins of the mandate

6. The adoption of Resolution 22/13 marked the first time that the Human Rights Council had established a commission of inquiry without a vote. It follows resolutions adopted in 2012 without a vote by the General Assembly and the Human Rights Council that expressed deep concern about the persisting deterioration in the human rights situation in the DPRK.[2]

7. Leading up to the adoption of Resolution 22/13, United Nations human rights entities, including the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, a number of Member States, and several civil society organizations, including human rights groups set up by persons who had fled the DPRK, had called for the establishment of an inquiry mechanism. The report of the Special Rapporteur on the situation of human rights in the DPRK to the 22nd session of the Human

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[1] A/HRC/RES/22/13.

[2] Human Rights Council resolution 19/13 and General Assembly resolution 67/151.

Rights Council, in particular, identified the need for an international independent and impartial inquiry mechanism with adequate resources to investigate and more fully document the grave, systematic and widespread violations of human rights in the DPRK.

8. In January 2013, the High Commissioner for Human Rights, Navi Pillay, called for a fully-fledged international inquiry into serious crimes that, she said, had been taking place in the DPRK for decades, and stressed that the concern about the DPRK's possession of nuclear weapons should not overshadow the deplorable human rights situation in North Korea.

9. The establishment of the Commission of Inquiry must also be seen in light of the DPRK's limited cooperation with the existing human rights mechanisms. The DPRK is a State Party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Since 2009, the DPRK has not submitted any state reports on the foregoing treaties, although in 2004, the DPRK did take the positive step of inviting a delegation of the Committee on the Rights of the Child to visit the country.

10. The DPRK underwent its first cycle of the Universal Periodic Review (UPR) in 2009 and will be subject to the second cycle in 2014. While stating some generic commitments to human rights obligations, the DPRK failed to accept any of the 167 recommendations made by the UPR Working Group in 2009.[3]

11. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has not had access to the country since the inception of the mandate in 2004. The DPRK has rejected the mandate, deeming it as a hostile act, and refuses to cooperate with it. Since the mission of the mandate of the Special Rapporteur on violence against women, its causes and consequences in 1995,[4] not a single mandate holder of the Human Rights Council has been invited, or permitted, to visit the DPRK.

12. On the basis of resolutions by the General Assembly and the Human Rights Council, the Secretary-General and the High Commissioner for Human Rights have also issued periodic reports detailing human rights violations and related impunity in the DPRK. The DPRK has not provided substantive input to these reports since it has rejected the underlying resolutions of the General Assembly and Human Rights Council. Since 2003, the DPRK Government has also rejected all offers of technical assistance from the Office of the High Commissioner for Human Rights (OHCHR).

B. Interpretation of the mandate

13. The mandate of the Commission of Inquiry is essentially found in paragraph 5 of Resolution 22/13 that makes specific reference to paragraph 31 of the 2013 report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.[5] Reading the two paragraphs together, the Commission determined that it had been mandated to investigate the systematic, widespread and grave violations of human rights in the DPRK including, in particular, the following nine specific substantive areas:

- violations of the right to food,

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[3] A/HRC/13/13

[4] E/CN.4/1996/53/Add.1

[5] A/HRC/22/57.

- the full range of violations associated with prison camps,
- torture and inhuman treatment,
- arbitrary arrest and detention,
- discrimination, in particular in the systemic denial and violation of basic human rights and fundamental freedoms,
- violations of the freedom of expression,
- violations of the right to life,
- violations of the freedom of individual movement, and
- enforced disappearances, including in the form of abductions of nationals of other states.

14. These nine areas, which are interlinking and overlap, therefore define the focus of the Commission's inquiry. However, this list of nine is not exhaustive, and, where appropriate, the Commission has also investigated violations that are intrinsically linked to one of the nine areas.

15. The mandate further indicates that the inquiry should pursue three inter-linked objectives: (1) further investigating and documenting human rights violations, (2) collecting and documenting victim and perpetrator accounts, and (3) ensuring accountability.

(a) Further investigation and documentation of human rights violations: Resolution 22/13 asks the Commission to investigate the systematic, widespread and grave violations of human rights in the DPRK. Likewise, paragraph 31 of the Special Rapporteur's report mentioned above repeatedly refers to more detailed documentation of such violations. The request for more detailed investigation, with a view to ensuring accountability, suggested a stronger focus on investigating how, and by whom, any violations have been found to be planned, ordered and organized.

(b) Documentation of the accounts of victims and perpetrators: The mandate, as elaborated by paragraph 31 of the Special Rapporteur's report, asks the Commission for "the collection and documentation of victims' testimonies and the accounts of survivors, witnesses and perpetrators". The Commission implemented this aspect of the mandate primarily by conducting public hearings of victims and other witnesses and making their testimonies available on its webpage. Additionally, accounts provided by victims and witnesses who could not speak publicly for protection reasons are safeguarded in a secure and confidential database.

(c) Ensuring full institutional and personal accountability: The mandate makes it clear that the investigation should be carried out "with a view to ensuring full accountability, in particular where these violations may amount to crimes against humanity". Paragraph 31 of the Special Rapporteur's report adds that the "inquiry should examine the issues of institutional and personal accountability for [grave, systematic and widespread violations], in particular where they amount to crimes against humanity".

16. Considering the extent, systematic nature and gravity of the reported violations, the Commission also considered the responsibility of the international community. It has directed recommendations towards the international community as requested by paragraph 5 of Resolution 22/13, read in conjunction with Paragraph 31 of the Special Rapporteur's report.

17. In accordance with paragraph 17 of Human Rights Council Resolution 23/25[6] and in line with best practices on the integration of gender in the exercise of mandates, the Commission has devoted specific attention to gendered issues and impacts of violations during the course of its investigations, paying particular attention to violence against women and children. Taking into account Human Rights Council Resolution 23/25, the Commission therefore paid specific attention to violence against women and girls and included the gender dimension of other violations in its report. Violence against women, in particular sexual violence, proved to be difficult to document owing to the stigma and shame that still attaches to the victims. The Commission takes the view that its inquiry may have only partially captured the extent of relevant violations.

18. Compared to the mandates given to other commissions of inquiry,[7] paragraph 5 of Resolution 22/13 does not limit the temporal scope for the Commission's inquiry. The Commission has focused on documenting violations that are reflective of the human rights situation as it persists at present. Within the limits of time, resources and available information at its disposal, the Commission has also inquired into patterns of human rights violations that may have commenced in the more distant past, but are continuing and/or have serious repercussions to this day. Historical events that predate the establishment of the DPRK are described where they are crucial to understanding the human rights violations in the DPRK and their underlying political, cultural and economic causes.

19. As to its geographic scope, the Commission has interpreted its mandate to include alleged violations perpetrated by the DPRK against its nationals both within and outside the DPRK as well as those violations that involve extraterritorial action originating from the DPRK, such as the abductions of non-DPRK nationals.

20. The Commission is of the view that violations committed outside the DPRK that causally enable or facilitate subsequent human rights violations in the DPRK, or are the immediate consequence of human rights violations that take place in the DPRK, are also within its mandate. In this respect, the Commission also made findings regarding the extent to which other states carry relevant responsibility.[8]

C. Non-cooperation by the Democratic People's Republic of Korea

21. Resolution 22/13 urges the Government of the DPRK to cooperate fully with the Commission's investigation, to permit the Commission's members unrestricted access to visit the country and to provide them with all information necessary to enable them to fulfil their mandate. Immediately after its adoption, the DPRK publicly stated that it would "totally reject and disregard" the resolution, which it considered to be a "product of

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[6] Resolution on accelerating efforts to eliminate all forms of violence against women: preventing and responding to rape and other forms of sexual violence (A/HRC/RES/23/25).

[7] For instance, Human Rights Council Resolution S-17/1 mandated the Commission of Inquiry on the Syrian Arab Republic to investigate all alleged violations of international human rights law since March 2011.

[8] The Commission of Inquiry (COI) on Libya investigated whether NATO committed violations during its bombing campaign (see A/HRC/19/68, paras. 83 ff). The Darfur COI reported that Chad and Libya were providing weapons to the rebellion. The COI on Syria documented the complicity of Hezbollah fighters in violations (see A/HRC/23/58, paras. 40 and 6). The COI on Israeli Settlements (A/HRC/22/63, paras. 96 ff) referred to the responsibility of foreign businesses, while the COI on Cote d'Ivoire detailed violations by Liberian mercenaries (A/HRC/A/HRC/17/48, paras. 64, 82 & 102).

political confrontation and conspiracy".[9] In a letter dated 10 May 2013, the DPRK directly conveyed to the President of the Human Rights Council that it "totally and categorically rejects the Commission of Inquiry". Regrettably, this stance has remained unchanged, despite numerous efforts by the Commission to engage the DPRK.

22. In a letter addressed to the Permanent Mission of the DPRK in Geneva dated 18 June 2013, the Commission requested a meeting. This was followed by another letter sent on 5 July 2013, in which the Commission solicited the DPRK to extend cooperation and support by facilitating access to the country. The Permanent Mission of the DPRK in Geneva acknowledged the receipt of the two letters to the Commission's Secretariat, but explicitly repeated the rejection of the mandate of the Commission.

23. The Commission reiterated its request to have access to the territory of the DPRK in a letter sent on 16 July 2013 to Mr Kim Jong-un, Supreme Leader and First Secretary of the Workers' Party of the Democratic People's Republic of Korea. This letter was unanswered.

24. The Commission also invited the authorities of the DPRK to send a representative or representatives to scrutinize the evidence and to make submissions during public hearings held by the Commission in Seoul, London and Washington D.C. There was no response to these invitations. The Commission is unaware of whether the DPRK made arrangements for the public hearings to be attended by a representative.

25. On 17 September 2013, during the interactive dialogue at the Human Rights Council, the Chair of the Commission reaffirmed that the Commission reached out in friendship to the DPRK and remained available to visit and engage in a dialogue on any terms that the authorities would consider appropriate. During the interactive dialogue at the Third Committee of the General Assembly on 29 October 2013, in the presence of the representatives of the DPRK to the United Nations in New York, the Chair again offered the opportunity of dialogue and interaction without any preconditions. These offers have not been followed up by the DPRK.

26. As late as 7 January 2014, the Commission provided written assurances to the authorities of the DPRK of its resolve to seek the advancement of the enjoyment of human rights by all people in the DPRK through the discharge of its mandate in an independent, impartial and transparent manner. The Commission reiterated its continued commitment to ensuring that its work be fully informed by the perspectives of the Government of the DPRK. It also emphasized that getting access to the concerned country and hearing the position of the authorities of the DPRK would contribute to a better understanding of the human rights situation inside the country. On this occasion, the Commission also offered to the Permanent Mission in Geneva to discuss the progress in the preparation of the report. All the above approaches to the DPRK have been ignored.

27. Before publication, the Commission shared the findings of this report, in their entirety, with the Government of the DPRK and invited comments and factual corrections. A summary of the most serious concerns, in particular those indicating the commission of crimes against humanity, was also included in a letter addressed to the Supreme Leader of

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[9] According to the DPRK's state-operated Korean Central News Agency, this position was conveyed through a Foreign Ministry spokesperson. See "UN Human Rights Council's "Resolution on Human Rights" against DPRK Rejected by DPRK FM Spokesman", *KCNA*, 22 March 2013. Available from http://www.kcna.co.jp/item/2013/201303/news22/20130322-39ee.html; "S. Korean Regime Denounced for Trying to Fabricate "Human Rights Resolution" against DPRK", *KCNA*, 26 March 2013. Available from http://www.kcna.co.jp/item/2013/201303/news26/20130326-12ee.html.

the DPRK, Mr Kim Jong-un.[10] To the date of writing of this report, there has been no response.

D. Methods of work

28. During its first meeting in the first week of July 2013, the Commission determined its methodology and programme of work. The Commission decided to pursue the investigation with a maximum of transparency and with due process guarantees to the DPRK, while also ensuring the protection of victims and witnesses.

29. In carrying out its work, and in assessing the testimony placed before it, the Commission was guided by the principles of independence, impartiality, objectivity, transparency, integrity and the principle of "do no harm", including in relation to guarantees of confidentiality and the protection of victims and witnesses. Best practices were applied with regard to witness protection, outreach, rules of procedure, report writing, international investigation standards, and archiving.[11]

1. Public hearings

30. In the absence of access to witnesses and sites inside the DPRK, the Commission decided to obtain first-hand testimony through public hearings that observed transparency, due process and the protection of victims and witnesses. Victims and witnesses who had departed the DPRK, as well as experts, testified in a transparent procedure that was open to the media, other observers and members of the general public. More than 80 witnesses and experts testified publicly and provided information of great specificity, detail and relevance, sometimes in ways that required a significant degree of courage.

31. Public hearings were conducted in Seoul (20-24 August 2013), Tokyo (29-30 August 2013), London (23 October 2013) and Washington, D.C. (30-31 October 2013). The authorities of the Republic of Korea, Japan, the United Kingdom of Great Britain and Northern Ireland, and the United States of America provided operational and substantive support for the conduct of the public hearings, including by facilitating the identification and hiring of a venue, assisting in the provision of the services of professional interpreters and providing video-recording and transcripts of the proceedings. They also ensured the security of the hearings and facilitated contact with the national and international press corps and relevant civil society organizations and individuals.

32. The public hearings covered all areas of the mandate. Witnesses were required to affirm that they were testifying truthfully. The Commissioners ensured that witnesses limited their testimony to issues relevant to the human rights situation in the DPRK and avoided unrelated political or derogatory statements. They also spoke about abuses that they had suffered or witnessed in other countries, to the extent that there was a direct causal link between such abuses and the human rights situation in the DPRK.

33. The Commission invited the authorities of the DPRK to attend and, by leave, to ask questions and make representations at the public hearings in Seoul, London and Washington D.C., but received no reply. Instead, the official news agency of DPRK publicly accused the Commission of slander and claimed that witness testimony was

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[10] See Annex I of the Commission report (A/HRC/25/63).

[11] In particular, the Commission followed the best practices that are also outlined in Office of the High Commissioner for Human Rights, International Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and International Humanitarian Law (2013).

fabricated.[12] The Commission repeatedly invited the DPRK to adduce proof of its claims, but received no reply. It also put these claims to witnesses so that they could respond in their own words. Video recordings and transcripts from all public hearings are available on the Commission's website[13] The Commission has encouraged members of the public to study the recordings and transcripts in order to form their own opinions of the reliability and consistency of the witness testimony.

2. Confidential interviews

34. Many victims and witnesses who fled the DPRK were prepared to share relevant information, but would not do so publicly as they feared reprisals against family members who still remain in the DPRK. Persons who previously served in an official capacity in the DPRK were often particularly reluctant to be seen to cooperate publicly with the Commission. Some experts on the situation in the DPRK also preferred to be interviewed confidentially in order to preserve space for their direct engagement with the DPRK.

35. The Commission and its Secretariat conducted over 240 confidential interviews with individual witnesses. These interviews were conducted during visits to Seoul, Tokyo, Bangkok, London, and Washington, D.C. and through videoconferences and telephone calls.

36. Excerpts from these interviews are included in the report. In many instances, information on the exact place and time of violations and other details that might identify the witness has been withheld due to protection concerns.

3. Call for submissions and review of other written materials

37. In July 2013, the Commission addressed a call for written submissions to all United Nations Member States and relevant stakeholders All interested states, persons or organizations were invited to share relevant information and documentation, which could be of assistance to the Commission in the discharge of its mandate. As of 3 November 2013, the deadline for sharing information and material with the Commission, 80 such submissions were recorded. Exceptionally, a small number of submissions received after the deadline were admitted. Additionally, a very large volume of correspondence was received by the Commission and the Commission's members.

38. The Commission obtained and reviewed a wealth of other reports and written materials prepared by the United Nations, non-governmental organizations, governments, research institutes and academics. While the findings in this report rely primarily on first-hand testimony from victims and witnesses, the written record has provided invaluable context and a source of corroboration. Many reports and documents were tendered by witnesses at the public hearings. They were all recorded as exhibits and are part of the record of those hearings.

4. Engagement with other states

39. The Commission visited the Republic of Korea from 19 to 27 August 2013. In addition to the public hearing held in Seoul, the Commission met the Prime Minister of the

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[12] See "KCNA Commentary Slams S. Korean Authorities for Chilling Atmosphere of Dialogue", *KCNA*, 27 August 2013. Available from http://www.kcna.co.jp/item/2013/201308/news27/20130827-14ee.html.

[13] Office of the High Commissioner for Human Rights. "Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea – Public Hearings". Available from http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/PublicHearings.aspx.

Republic of Korea, government officials from various ministries, local and international non-governmental and civil society organizations, the National Human Rights Commission of Korea and the Korea Institute for National Unification.

40. The Commission visited Japan from 27 August to 1 September 2013. In addition to the public hearing held in Tokyo, the Commission met the Prime Minister of Japan, government officials from various ministries, and local and international non-governmental and civil society organizations.

41. The Commission visited Thailand from 18 to 20 September 2013. During this visit, the Commission met officials of the Royal Thai Government including the Ministry of Foreign Affairs, the National Human Rights Commission of Thailand, representatives of international agencies, and local and international non-governmental and civil society organizations. The Commissioners conducted a confidential interview with the family of a suspected case of international abduction by the DPRK.

42. The Commission visited the United Kingdom of Great Britain and Northern Ireland from 23 to 25 October 2013. In addition to public hearing held in London, the Commission met the Minister of State responsible for the Far East and South East Asia of the Foreign and Commonwealth Office, various government officials, non-governmental and civil society organizations.

43. The Commission visited the United States of America from 28 October to 1 November 2013. In addition to the public hearing held in Washington D.C., the Commission met officials of the United States Department of State, the chairperson and members of the Foreign Affairs Committee of the House of Representatives, various government officials, experts, and non-governmental and civil society organizations.

44. Visits of the Commission to the respective countries were preceded by the deployment of the members of the Commission's Secretariat to make preparations for the public hearings, meet with relevant partners and conduct confidential interviews in different locations in the country in the course of the Commission's work. The Secretariat staff made an additional visit to Seoul at the end of October 2013 for three weeks to conduct additional confidential interviews and to carry out other follow-up action to the public hearings held in August 2013.

45. From its first working meeting in July 2013, the Commission sought access to the territory of the People's Republic of China to conduct relevant inquiries and to consult with the authorities about the implementation of its mandate. Specifically, the Commission asked for access to the areas of the country bordering the DPRK, in order to obtain first-hand information about the situation of persons who fled the DPRK. Additionally, the Commission asked to meet Chinese experts on the DPRK to inform its investigations. After a series of informal meetings with diplomats of the Permanent Mission of the People's Republic of China to the United Nations Office in Geneva, the Commission transmitted a formal request to the Permanent Mission of the People's Republic of China on 7 November 2013 for an invitation to visit China. In the letter, the Commission requested agreement to a visit to Beijing in order to meet relevant officials and experts and to the Yanbian Korean Autonomous Prefecture in order to interview DPRK nationals in holding centres and other places of detention as well as representatives of churches and other organizations who are involved in caring for DPRK nationals in China. The letter highlighted the alleged trafficking of women from the DPRK to China and the status of children of North Korean mothers and Chinese fathers as issues of prime concern for the Commission in China. On 20 November 2013, the Permanent Mission informed the Secretariat that, given China's position on country-specific mandates, especially on the Korean peninsula, it would not be possible to extend an invitation to the Commission. In a follow-up letter, the Commission requested the Permanent Mission of the People's Republic of China in Geneva to provide

information on the status of DPRK citizens and their children in China, forced repatriations to and related cooperation with the DPRK, human trafficking, and other issues of concern to the mandate of the Commission. On 30 December 2013, the Commission received a reply to its letter. An additional letter was received on 26 January 2013. The correspondence is annexed to the report of the Commission.[14]

46. Sections of the report that touch on the responsibility of other states, responsibility for their nationals and/or matters directly related to other states have been shared with the Governments concerned to permit factual corrections. Information received in response, within the stipulated deadlines, has been carefully reviewed by the Commission and integrated to the extent appropriate, in particular where facts were inaccurately expressed.

5. Cooperation of United Nations entities and other organizations

47. Resolution 22/13 encourages the United Nations, including its specialized agencies, regional intergovernmental organizations, mandate holders, interested institutions and independent experts and non-governmental organizations, to develop regular dialogue and cooperation with the Commission in the fulfilment of its mandate.

48. The Commission has engaged with a number of United Nations entities and humanitarian actors outside the United Nations system to obtain relevant information. A small number of United Nations entities were wary of cooperating openly with the Commission for fear of negative repercussions on their operations in the DPRK. Some provided relevant information, while others did not. This report only attributes information to specific organizations where such information is reflected in their public reports. The citation of a public report is not necessarily an indication that an organization has cooperated with the Commission.

49. The Commission extends its gratitude to the Office of the High Commissioner for Human Rights. Apart from its dedicated Secretariat, the Commission also received advice and support from OHCHR's standing function to support commissions of inquiry, fact-finding missions and other human rights investigative missions. Such support and assistance was afforded with proper respect to the independence and integrity of the Commission, its members and its Secretariat. The Commission also interacted with, and received relevant information from, a number of mandate holders under the Special Procedures of the Human Rights Council and human rights Treaty Bodies.

50. The Commission benefitted from the invaluable support of a number of non-governmental organizations that thoroughly document human rights violations in the DPRK. These organizations sometimes suffer from inadequate financial resources. Nevertheless, they went to great lengths to ensure that the Commission could gain the trust of victims and witnesses who had departed the DPRK.

6. Protection of witnesses and other investigative challenges

51. The Commission paid particular attention to the protection of victims and witnesses. The initial protection assessment carried out by the Commission indicated that the authorities of the DPRK routinely subject persons who speak out about the human rights situation in the DPRK to summary executions, enforced disappearances and other acts of violence. Grave reprisals have also been extended to the family members of such persons. The Commission took into account the policy of the People's Republic of China to forcibly repatriate persons who depart the DPRK as well as known cases in which such persons were abducted by DPRK authorities and forced to return to the DPRK.

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[14] See A/HRC/25/63, annex II .

52. Bearing this context in mind, the Commission sought to exercise judgement, caution and sensitivity in all interactions with victims and witnesses. Constant assessments were made about the need to establish contact with persons who may be placed at risk as a result of that contact. Contacts were not attempted if the Commission determined that it would not be able to ensure the safety of a cooperating person, if the risk of harm was assessed to be too high or if the Commission did not have sufficient information to make an informed determination on the level of risk. In particular, the Commission did not pursue offers to have direct contact through mobile telephones with witnesses still residing in the DPRK.

53. In relation to the public hearings, protection concerns were carefully assessed on a case-by-case basis, taking into account all relevant circumstances. In principle, the Commission only heard publicly from victims and witnesses who had no close family left in the DPRK or were judged not to be at risk in the People's Republic of China. Informed consent of the witness to testify was a necessary, but not sufficient, requirement to allow for the testimony to be heard. In some cases, the Commission refused the offer of courageous witnesses who offered to testify in public, since reprisals against family were judged a real possibility. In other cases, victims and witnesses whose names and experiences were already subject to extensive media coverage were allowed to testify, unless there were reasonable grounds to believe that additional public testimony might result in further reprisals. The Commission also took care to ensure that witnesses' testimony and questioning would not refer to the personal details of persons who had not expressed their consent to be identified in public and who could face protection concerns.

54. The identity of all witnesses was established by the Commission prior to the hearings. Most witnesses were also prepared to reveal their identity during the public hearings. For protection reasons, however, some witnesses were permitted only to identify themselves with a pseudonym (Ms X, Mr Timothy etc.) and to take measures to conceal their faces or adopt other identifiers. A small number of witnesses wore hats, sunglasses or other clothing that covered parts of their faces, measures to prevent the discovery of their identity.

55. Even these extensive protection measures may not prevent reprisals. The Commission requests that any information indicating that persons who cooperated with the Commission or their family members faced reprisals be brought to the immediate attention of the Secretary-General, through the High Commissioner for Human Rights. The Commission recalls that primary responsibility for protecting victims, witnesses and other persons cooperating with the Commission rests with their states of residence and nationality and urges Member States to provide additional protection measures where necessary.

56. The lack of physical access to witnesses and sites in the DPRK, coupled with the stated protection concerns, created a number of particular challenges for an effective investigation.

57. The pool of potential first-hand witnesses is limited to no more than 30,000 citizens who have left the DPRK, the vast majority of whom reside today in the Republic of Korea. Most of these witnesses are from provinces bordering China, which means that the situation in those provinces is relatively better documented than the situation in other provinces of the DPRK. In most cases, a person who fled the DPRK requires considerable time to reach a place of safety and to develop the courage necessary to speak about his or her experience. Given that the Commission applied a rigorous standard of proof based on first-hand testimony, it was therefore not able to confirm many of the most recent instances of human rights violations alleged by non-governmental organizations and media reports.

58. The most significant challenge faced by the Commission resulted from a fear of reprisals. The majority of potential witnesses were afraid to speak out even on a confidential basis because they feared for the safety of their families and assumed that their

conduct was still being clandestinely monitored by the DPRK authorities. The Commission is therefore particularly grateful to those individuals who found the courage to break the wall of silence by testifying publicly or confidentially to the Commission.

59. Fear of reprisals for their work and operations has also limited the willingness of many aid workers, journalists, diplomats and other foreign visitors to the DPRK to share knowledge and information with the Commission. Nevertheless, foreigners usually have limited first-hand knowledge about the human rights situation, since they are denied freedom of movement in the country and their contact with DPRK citizens is closely managed and monitored.

60. The Commission found encouraging the amount of information that is seeping out of the DPRK with the advent and wider availability of technology. The Commission was able to rely on commercially available satellite images to confirm the existence of four political prison camps described in this report. Almost certainly, higher resolution satellite imagery produced by more technologically advanced states would have provided further information. Unfortunately, despite requests, these images were not made available to the Commission.

61. The Commission also obtained clandestinely-recorded videos and photographs showing relevant sites, documents and correspondence that elucidated alleged violations of human rights in the DPRK. The Commission relied on such material to the extent that it could confirm its authenticity.

62. The Commission is conscious of the fact that most victims and witnesses cooperating with the Commission had an overall unfavourable opinion of the DPRK's authorities, though usually not of the country itself or its people. Through its refusal to cooperate with the Commission, the DPRK deprived itself of the opportunity to offer its own perspectives on the human rights situation and to provide information on any advances made in regard to the human rights of its population. The Commission has sought to account for these challenges by carefully reviewing information provided by the DPRK in publicly available documents. In particular, the Commission has reviewed the DPRK's state reports to the Universal Periodic Review and the Treaty Bodies as well as the publicly available summaries of its responses to letters of allegations transmitted by the Special Procedures of the Human Rights Council. Figures and other relevant claims of fact stated in these documents are reflected in this report, even if the Commission could not confirm their basis or validity.

E. Legal framework and standard of proof for reported violations

63. In assessing the human rights situation in the DPRK, the Commission relied chiefly on the binding legal obligations that the DPRK voluntarily assumed as a State Party to the human rights treaties mentioned above. Other obligations expressed in customary international law also bind the DPRK.

64. In relation to issues within its mandate that harken back to the period of the Korean War (1950-53), the Commission also took into account those residual obligations of international humanitarian law that continue to be applicable in the relations between the DPRK and other parties to that conflict.

65. The possible commission of crimes against humanity are assessed on the basis of definitions set out by customary international criminal law, which to a large extent overlap with those later expressed in the Rome Statute of the International Criminal Court.

66. Where appropriate, the Commission has also considered relevant obligations of other states, including the prohibition of *refoulement* under international refugee law and

international human rights law as well as the rights and duties of states in extending diplomatic protection to their nationals and permanent residents.

67. Consistent with the practice of other United Nations fact-finding bodies, the Commission employed a "reasonable grounds" standard of proof in making factual determinations on individual cases, incidents and patterns of state conduct. These factual determinations provided the basis for the legal qualification of incidents and patterns of conduct as human rights violations and, where appropriate, crimes against humanity.

68. There are "reasonable grounds" establishing that an incident or pattern of conduct has occurred when the Commission is satisfied that it has obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person has reason to believe that such incident or pattern of conduct has occurred. This standard of proof is lower than the standard required in criminal proceedings to sustain an indictment, but is sufficiently high to call for further investigations into the incident or pattern of conduct and, where available, initiation of the consideration of a possible prosecution. The findings of the Commission appearing in this report must be understood as being based on the "reasonable grounds" standard of proof, even when the full expression ("reasonable grounds establishing") is not necessarily expressed throughout the text of this report.

69. In line with the methodology of the Commission, particular emphasis was given to information gathered during public hearings, given that the general public and experts can directly scrutinize the Commission's assessment of the reliability and credibility of the witness and the validity of the information provided.

70. Individual cases and incidents reflected in this report are generally based on at least one credible source of first-hand information, which was independently corroborated by at least one other credible source of information. To the extent that protection considerations permit, sources are identified. Where the report describes patterns of conduct, these are based on several credible sources of first-hand information, which are consistent with, and corroborated by, the overall body of credible information collected. In the few instances where this rigorous standard of proof could not be met, but the Commission still considered it appropriate to reflect the incident or pattern, the underlying sources are identified.

71. The Commission considered the following to be sources of first-hand information:

(a) testimony provided in public hearings and confidential interviews by victims, eyewitnesses, victims' close family members, perpetrators or former DPRK officials with direct knowledge of the issues, incidents and trends brought before the Commission, where it was assessed that the source was credible and reliable and the information valid;

(b) satellite imagery from reliable sources, authenticated video and photo material, autobiographies, and other documents containing first-hand information from a reliable source. This category also includes a number of exhibits received during the public hearings;

(c) publicly available admissions of relevant facts by the DPRK;

(d) laws, policies and directives of the DPRK as well as internal DPRK documents, provided that they were received from a credible and reliable source and their authenticity could be confirmed; and

(e) statistics, surveys and other quantitative information generated by the DPRK or the United Nations, to the extent that the data is based on an apparently sound methodology and the inputs underlying the data are considered valid and originating from a credible and reliable source.

72. The Commission relied on the following types of information for the purposes of corroborating information based on first-hand sources and providing the overall context to violations:

(a) testimony provided in public hearings or confidential interviews by witnesses who received the information directly from a person known to them (and not as a rumour), provided that the Commission assessed the source to be credible and reliable and the information to be valid;

(b) summaries of witness testimony contained in publications or in submissions by the United Nations, research institutes and human rights organizations, where the Commission assessed the source to be credible and reliable and the information to be valid; and

(c) summary descriptions of patterns of conduct contained in expert testimony, public reports, submissions, books, documentaries and similar materials, where the Commission assessed the source to be credible and reliable and the information to be valid.

73. The reliability and credibility of each source was carefully assessed by the Commission. The Commission considered whether the source was trustworthy and whether the person was telling what he or she believed to be true. This assessment took into account, amongst other considerations, the following:

(a) the witness's political and personal interests, potential biases and past record of reliability (if known);

(b) the witness's apparent capacity to correctly recall events, considering his or her age, trauma, how far back the events occurred, etc.;

(c) the position of the witness in relation to the subject of the information;

(d) where and how the witness obtained the information; and

(e) the reasons for which the witness provided the information.

74. The Commission additionally considered that any piece of information had to be assessed for its validity by considering, amongst other factors, the information's relevance to the inquiry, its internal consistency and coherence, its logicality and its consistency with and corroboration by other information.

75. Assessments of the reliability and credibility of the source were separated from assessments of the validity of the information. The Commission did not assume that a witness, judged to be a credible and reliable source, would necessarily provide accurate and valid information.

76. Where information was assessed to meet the "reasonable grounds" standard, the Commission could reach its conclusions and draw inferences more comfortably because it had repeatedly offered to the authorities of the DPRK the opportunity to attend the public hearings, to obtain leave to ask questions to the relevant witnesses, and to address the Commission on such information. In addition, the Commission shared its findings with the DPRK and invited comments and factual corrections. The authorities of the DPRK have failed to avail themselves of such facilities by their own decisions.

77. Where the Commission refers in this report to a testimony of a witness, the testimony as assessed and described is accepted by the Commission as truthful and relevant (except to any degree expressly identified).

78. Direct reference to specific testimony in the report does not indicate that such testimony is the sole basis of judgement by the Commission in relation to the issues under analysis. Where these direct references and citations are found in the report, it is to be

understood that the Commission has decided to introduce them for the purpose of providing an example or an illustration of broader human rights issues and/or patterns of conduct.

F. Archiving and record-keeping of testimony

79. With the assistance of relevant OHCHR sections, a confidential electronic database was specially created from an OHCHR standard model to enable the Commission to securely record and store information pertaining to its mandate. Specifically, the use of the database enabled the Commission to:

(a) safely manage, follow-up and archive information;

(b) keep information secure, including through encryption;

(c) retrieve and analyse information; and

(d) adhere to a sound human rights monitoring and reporting methodology.

80. The database contains the summary records of all interviews conducted with witnesses as well as electronic copies of relevant materials gathered during the course of the inquiry. As a fully searchable tool, the database facilitated the logical organization and retrieval of information for analysis, establishing trends and patterns which assisted in the writing of this report.

81. The free, informed and specific consent of interviewees to use and/or share information gathered was recorded in the database, as was any additional assessment of the Commission about possible protection risks of using and/or sharing the information received even when interviewees freely consented to its use.

82. The Commission of Inquiry has requested the High Commissioner for Human Rights to safeguard the confidential database. The Commission has also informed the High Commissioner of its wish that the database remain a living instrument that will continue to be updated and expanded. The database should therefore be made accessible in full to OHCHR, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and any future United Nations mechanisms tasked to protect human rights in the DPRK.

83. Furthermore, the Commission has authorized the High Commissioner, acting as the residual Secretariat of the Commission, to provide access to the existing materials contained in the database to competent authorities that carry out credible investigations for the purposes of ensuring accountability for crimes and other violations committed, establishing the truth about violations committed or implementing United Nations-mandated targeted sanctions against particular individuals or institutions. Access should only be granted to the extent that witnesses or other sources of information concerned have given their informed consent and that any protection and operational concerns are duly addressed. To ensure that the information gathered by the Commission is preserved in its integrity once the Commission has fulfilled its mandate, the physical records of the Commission will also be archived in accordance with United Nations archiving practices.[15]

84. At this stage of the history of the Korean people, the creation and maintenance of an archive of the testimony of individual witnesses on human rights abuses in the DPRK and the writings of experts is an important contribution to human rights awareness and eventual accountability. Among the greatest affronts to the achievement and maintenance of

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[15] Secretary-General's Bulletin, *Record-keeping and the management of United Nations archives*, 12 February 2007 (ST/SGB/2007/5).

universal human rights for all peoples is the risk that grave violations take place unknown, in secret, and are not recorded and analysed so that future generations can learn from, and resolve to avoid, shocking departures from the universal values recognized in international law. This report describes many such shocking departures.

III. Historical and political context to human rights violations in the Democratic People's Republic of Korea

85. The current human rights situation in the DPRK has been shaped by the historical experiences of the Korean people. Confucian social structures and the oppression suffered during the Japanese colonial occupation have informed the political structures and attitudes prevailing in the DPRK today. The imposed division of the Korean peninsula, the massive destruction that occurred during the Korean War and the impact of the Cold War have engendered an isolationist mind-set and a deep aversion to outside powers. The particular nature and the overall scale of human rights violations in the DPRK can be better understood through an appreciation of the development of the system of government in the DPRK. The DPRK is a single-party state dominated by a family dynasty which controls the party, the state and the military. Rigid ideological tenets loosely based on socialist Marxist-Leninist theory and an extensive security apparatus sustain this regime.

86. Any description of history and political structures inevitably reflects the sources and viewpoints of those who record it. The Commission endeavoured at different stages to engage with the DPRK in order to receive directly its perspective, including on historical events. In the absence of any such engagement, the Commission has nonetheless sought to effect a balanced approach and to use the most reliable sources at its disposal to inform its understanding of the historical and political context to the human rights violations in the DPRK.

A. Pre-colonial history

87. The DPRK is often referred to as the "Hermit Kingdom" suggesting that the insularity of the North has been characteristic since its beginnings. The largely self-imposed relative isolation of the DPRK today is not, however, an extension of the earlier experiences of pre-modern Korea. It is believed that humans inhabited the Korean peninsula since Neolithic times, with the eventual emergence of settled communities based on agricultural production that led to enough surplus for horses, weapons and armies to sustain centuries of legends of epic battles among various indigenous kingdoms and against outside forces from modern-day China, Japan and Mongolia.

88. Over the course of pre-modern history, Korea established a class-based system whereby a small aristocratic elite, combining elements of a landed gentry and scholar-officials, eventually to be known as the *yangban*, ruled over peasants and lower classes that included merchants and labourers. Slavery and indentured servitude were also practised. This class-based system is sometimes characterized as feudal and perhaps more accurately as agrarian-bureaucratic. In theory, this system conferred elite status on men who had passed a rigorous civil service exam and were awarded high-level bureaucratic positions, somewhat analogous to the mandarin system in China. Over time, the *yangban* became, in practice, a hereditary institution through the family registry system that passed on elite status through the generations, with its self-perpetuating privileges including the right to participate in local councils.

89. The *yangban* class system speaks to the deep-rooted Confucian underpinnings of Korean society. Confucianism is essentially an ethical and philosophical system that

regards adherence to strict hierarchies as important to social harmony and personal fulfilment. Five key relationships set out these hierarchies: sovereign and subject, husband and wife, parent and child, elder brother and younger brother, and friend and friend. The most important of those is the parent and child relationship. In fact, respect for elders and social hierarchy based on age remain key features of Korean culture both in the North and South today. Likewise, the position of women remains adversely affected by traditional attitudes of inequality.[16]

B. Japanese colonial occupation (1910 to 1945)

90. The Japanese colonial occupation of Korea was preceded by centuries of encounters between Korea and the outside world, through invasions by, and relationships with, the Chinese, Japanese, Mongols, Manchus, and, in later years, the Russians, French and Americans. In 1876, Korea signed an unfavourable treaty with Japan, although foreign influence inside Korea was not restricted to the Japanese. Factions allied with Chinese, Russian and United States interests, as well as native Korean reformers, jockeyed for position in the court of King Kojong. Korea was contested by each of the powers seeking to expand their spheres of influence in Asia. The Sino-Japanese War (1894-95) resulted in Japan ending Korea's tributary relationship with China by formally declaring Korea to be independent, a status which allowed Japan to increase its influence on the peninsula. The Russo-Japanese War (1904-05) saw the Japanese defeat the Russian fleet at Port Arthur (in Dalian, China). This led to a peace treaty brokered by United States President Theodore Roosevelt in Portsmouth, New Hampshire, that recognized Korea as a protectorate of Japan. In 1910, Japan formally declared Korea to be a colony, ending its monarchy and requiring the allegiance of the Korean people to the Emperor of Japan.

91. Japan imposed various modernizing reforms, including in matters of social, administrative and economic organization. Nevertheless, Koreans have overwhelmingly viewed the colonial experience as negative and brutal. Koreans were subject to racial discrimination laws in their own country. They were prohibited from speaking the Korean language and made to adopt Japanese names. Japan sent around 700,000 nationals to fill roles in government service as all top administrative positions were filled by Japanese.[17] Transportation, communications, industry and even agriculture were expanded for the benefit of the colonial power rather than the Korean people. The results of Japan's modernization drive on the peninsula were characterized by patterns of development and underdevelopment. The question of whether Japan ultimately assisted Korea in its development remains highly contested both politically and in academia.[18]

92. The March First Independence Movement of 1919 prompted protests by students and other Koreans against Japanese rule in several Korean cities, including Seoul and

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[16] The Committee on the Elimination of Discrimination against Women in its concluding observations on the Republic of Korea in July 2011 remained concerned about "the persistence of patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in the family and in the society" (CEDAW/C/KOR/CO/7). Similarly, in July 2005, the Committee had urged the DPRK "to address stereotypical attitudes about the roles and responsibilities of women and men, including the hidden patterns that perpetuate direct and indirect discrimination against women and girls in the areas of education and employment and in all other areas of their lives" (CEDAW/C/PRK/CO/1).

[17] Andrea Matles Savada, ed., *North Korea: A Country Study, Library of Congress*, 1993, Available from http://countrystudies.us/north-korea/12.htm.

[18] For example, see Daqing Yang, "Japanese Colonial Infrastructure in Northeast Asia", in *Korea at the Center: Dynamics of Regionalism in Northeast Asia*, Charles K. Armstrong and others, eds. (New York, M.E. Sharpe, 2006).

Pyongyang. These non-violent demonstrations spread over the ensuing days to numerous cities and towns. Japanese authorities arrested thousands of Koreans, many of whom died as a result of torture and inhumane conditions of detention.[19]

93. Japan instigated major industrialization on the Korean peninsula as part of its massive war effort. Steel mills, factories and hydroelectric plants were built, mainly in the North. Much of the Korean population was uprooted from its agrarian base. Koreans, including women and children, were sent to labour in factories in the northern part of the peninsula and in Manchuria and to mines and other enterprises in Japan. Many of the labourers worked under terrible conditions, and a large number of men and women were conscripted as forced labour.[20] By 1945, it is estimated that Koreans made up a large percentage of the entire labour force in Japan.[21]

94. It is estimated that by 1945, 20 per cent of all Koreans had been displaced from their places of origin, with 11 per cent displaced outside Korea.[22] At the end of World War II, there were approximately 2.4 million Koreans in Japan, 2 million in China and about 200,000 in the Soviet Union.[23] After Japan's defeat in World War II, the colonial administration collapsed. Millions of displaced Koreans sought to return home while others stayed behind in Japan, China and the Soviet Union. The legacy of this forced displacement includes substantial minority populations of Koreans, particularly in Japan and northern China.[24]

C. Division of the peninsula, the Korean War and its legacy

95. As the end of World War II approached, the matter of the disposition of colonies around the world became subject to negotiation by the soon-to-be victorious powers. The United States of America suggested a multi-lateral trusteeship for Korea in its general

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[19] See the Encyclopaedia Britannica, available from http://www.britannica.com/EBchecked/topic/364173/March-First-Movement; Global Nonviolent Action Database, available from http://nvdatabase.swarthmore.edu/content/koreans-protest-japanese-control-march-1st-movement-1919; and Nishi Masayuki, "March 1 and May 4, 1919 in Korea, China and Japan: Toward an International History of East Asian Independence Movements," *Asia-Pacific Journal: Japan Focus*, October 31, 2007, available from http://japanfocus.org/-nishi-masayuki/2560#sthash.F2t9tgKt.dpuf.

[20] In May 2012, the Republic of Korea's Supreme Court in a decision that reversed previous lower court decisions and ruled that the right of former forced workers and their families to seek withheld wages and compensation was not invalidated by the 1965 treaty that normalized bi-lateral ties. In July 2013, the Seoul High Court ruled in favour of four Korean men who were taken into forced labour, ordering Nippon Steel & Sumitomo Metal to pay them a total of 400 million won. The Busan High Court, on 30 July 2013, ordered Mitsubishi Heavy Industries to pay the same amount in compensation to five Koreans. In October 2013, the Gwangju District Court ordered Mitsubishi Heavy Industries Ltd. to pay four Korean women, who were forcibly conscripted as labourers, 150 million won (about US$141,510) each in compensation. Japan maintains that all individual compensation claims were settled with the 1965 treaty. "South Korean court orders MHI to pay Korean women for forced labour", *Kyodo News*, 1 November 2013. Appeals against these judgements were pending when this report was finalized.

[21] According to Bruce Cummings, 32 per cent of the entire labour force of Japan was Koreans. Bruce Cummings, *The Origins of the Korean War: Liberation and the Emergence of Separate Regimes, 1945-1947* (Princeton University Press, 1981), p. 28.

[22] Bruce Cummings, *The Origins of the Korean War*, p. 25.

[23] Charles Armstrong, *The Koreas* (New York, Routledge, 2007), pp. 95-101.

[24] After the war, half of the Koreans in China chose to stay, and about 600,000 Koreans remained in Japan. Charles Armstrong, *The Koreas*, pp. 108-111.

preference for the establishment of gradual independence processes. In 1943, in anticipation of Japan's defeat, the Allied Powers at the Cairo Conference set out an agreement for the independence of Korea "in due course". In 1945, the United States decided on the 38th parallel to divide the Korean peninsula into two zones of control, one under an American sphere of influence and the other under a Soviet one. The United States sent 25,000 troops to South Korea in fulfilment of these arrangements. They were often met with resentment and resistance. In August 1945, the Soviet Union sent its 25th Army to North Korea where it set up the Soviet Civil Administration.

96. The Japanese departure from the Korean peninsula was abrupt. Self-governance groups, or people's committees, appeared throughout the peninsula to fill the vacuum. The United States actively suppressed these groups while the Soviet Union developed them into core institutions of governance. When the Soviets arrived in Pyongyang, the leader of the Korean nationalists, Cho Man-sik, the most popular politician in North Korea, had established the South Pyongan Committee for the Preparation for Independence. Among the Soviet troops who were dispatched to North Korea were "Soviet Koreans", ethnic Koreans who had been either been part of the substantial Korean minority population following immigration into the Russian Far East in the late 1860s or those more recent arrivals who had fled from Manchuria under intensified Japanese pressure against guerrilla fighters there. These Soviet Koreans included the 33 year-old Korean guerrilla hero Kim Il-sung who was a military officer with the rank of captain in the Soviet Army.

97. When the Soviet Union decided against retaining Cho Man-sik as the local leader, Kim Il-sung was selected as an alternate candidate. On 14 October 1945, Kim Il-sung spoke publicly for the first time to a mass rally in honour of the Soviet Army. He was introduced by Soviet General Lebedev as a "national hero" and an "outstanding guerrilla leader". Nevertheless, Kim Il-sung was only one of three North Koreans who spoke at the event. He was not the most senior of them as Cho Man-sik remained the head of the Administrative Committee of the Five Provinces, the first proto-government established by the Soviets. In December 1945, however, the foreign ministers of the Soviet Union, the United States and United Kingdom met in Moscow where they agreed to a joint trusteeship of Korea for five years. Nationalists in Seoul staged rallies against the decision. Cho Man-sik, likewise, refused to sign the declaration of support of trusteeship in January 1946. He was subsequently imprisoned and died in October 1950.

98. By 1946, the Soviet Civil Administration devolved authority to the local administration. Kim Il-sung was made head of the Provisional People's Committee of North Korea. There was less resistance to the Soviet Union's influence in the North than there was to the United States in the South. In March 1946, the Provisional People's Committee issued a Land Reform Law which was signed by Kim Il-sung. Land belonging to Japanese entities and individuals as well as large landowners was confiscated and redistributed to former peasant tenants.[25] The land reform in the North was generally successful and helped to strengthen the position of the new regime. In August 1946, the Provisional People's Committee nationalized industry. Technically, only Japanese owners and Korean collaborators were subject to confiscation, but this effectively included all large and most medium sized industries. Efforts to promote national culture and education were also popular with the people. In 1947, the DPRK launched its first economic plan.

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[25] The DPRK's official biography of Kim Il-sung notes that, "Through the agrarian reform, a total of 1,000,325 hectares of land that had belonged to Japanese imperialists, pro-Japanese elements, traitors to the nation and landlords were confiscated and distributed to 724,522 peasant households which had had little or no land." *Kim Il Sung: Condensed Biography* (Pyongyang, Foreign Languages Publishing House, 2001), p. 131.

99. At the top, this early period was marked by intense factional jockeying for power that continued for over a decade. Kim Il-sung began to consolidate his power by placing his supporters, the young guerrillas who had fought with him against Japan in Manchuria—the Guerrilla Faction, into positions of power and purging those who posed a threat to his assumption of authority. In 1946, former Soviet police officer Pang Hak-se was appointed to head the Section on Political Defence of the state within the Security Department, which was the first organization for the political police and counter-intelligence. Pang Hak-se is credited as the founder of the North Korean political police. Despite coming from the Soviet Korean Faction, and not from Kim Il-sung's own Guerrilla Faction, he maintained lifelong loyalty to him.

100. Although Kim Il-sung was by most accounts an accomplished guerrilla fighter, he quickly began to bolster his standing through enhancement of his personal record and engendering a cult of personality that has come to characterize the governance of the DPRK and the state's approach towards freedom of information, opinion and expression. Former Chairman of the Standing Committee of the Supreme People's Assembly Hwang Jang-yop explained:

> The reason why Kim was chosen from among the Koreans in the 88th Infantry Brigade was apparently because he was young and had a good outlook. His experiences were no match for the Chinese [Korean] leaders of the day, though. Exaggerated propaganda was necessary in order to elevate a Russian army captain to the status of legendary North Korean hero, but at that time Korea had just experienced painful oppression under Japanese rule. This presented a good opportunity for exaggerated propaganda.[26]

101. In 1946, there was a consolidation of all political groups into the North Korean Workers' Party. The North Korean armed forces were also organized and reinforced. They were trained and equipped by the Soviet military although initially they were disguised as police and railway defence units. By the time the DPRK was established in September 1948, Kim Il-sung was firmly in position as the head of the Cabinet of Ministers (or Premier). Soviet forces then withdrew in large numbers from the DPRK. In 1949, the DPRK instituted compulsory military service, bringing the total number of troops to between 150,000 and 200,000, organized into ten infantry divisions, one tank division and one air force division. This large military force was equipped with Soviet weapons, including T-34 tanks and Yak fighter planes. These forces were further bolstered by the return of 45,000 war-hardened Korean soldiers from China following the end of the civil war there.

102. Between 1945 and 1948, the 38th parallel turned into a heavily guarded border, while both sides of the divided peninsula contemplated the use of military force to achieve reunification. Tensions and military provocations increased after the respective departures of Soviet and United States forces in 1948. On 25 June 1950, Kim Il-sung, after finally securing support from both Joseph Stalin and Mao Zedong,[27] initiated the Korean War by

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[26] Hwang Jang-yop was the highest level defector to the ROK. See *Hwang Jang-yop Hoegorok* (Hwang Jang-yop's memoirs) (Published in Korean by Zeitgeist, 2006, translated by Daily NK). SUB0064.

[27] Joseph Stalin backed Kim Il-sung's war by withdrawing his earlier opposition to it, minimizing his own contribution and putting the onus of support on Mao Zedong's new government in China. The Soviet Union provided heavy weaponry to the DPRK but did not provide troops. Nevertheless, Kim Il-sung's top military advisors in the early phase of the war were Russian generals who re-drew North Korean invasion plans to their own specifications. Mao pledged to send Chinese troops if the Americans entered the war. David Halberstam, *The Coldest Winter: America and the Korean War* (New York, Hyperion, 2007), pp. 47-59. Soviet archives also support this account, in Andrei Lankov,

sending up to 90,000 Korean People's Army troops over the 38th parallel in a multi-pronged attack that surprised both the ROK authorities and their United States advisors.[28] Kim Il-sung was staking his claim to the leadership of the entire peninsula based on the perceived illegitimacy of the ROK leadership and expectations of insurgency in the South. Initially, the Korean People's Army easily overwhelmed the forces of the ROK, which numbered fewer than 100,000 men. The capital Seoul fell in three days.

103. United States President Harry S. Truman interpreted the attack by the DPRK on the ROK as the first major test of the Cold War. He quickly ordered the deployment of United States troops while seeking endorsement of his actions from the United Nations Security Council. The Security Council had initially adopted a United States-led resolution calling for the immediate cessation of hostilities and the withdrawal of North Korean forces to beyond the 38th parallel with a vote of 9 to 0 with three abstentions.[29] The Soviet Union was not present to exercise its veto as a Permanent Member of the Security Council. The Soviet Union had been refusing to participate in the Security Council since January 1950 over the issue of the accreditation of China. China's seat in the United Nations was still held by the representative of the Republic of China, based in Taiwan, despite the defeat of Nationalist forces on the mainland.[30] On 27 June 1950, President Truman ordered United States air and naval forces to support the ROK. Security Council Resolution 83, adopted on the same day, determined that "the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace". It recommended that United Nations members "furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area". On 7 July 1950, the Security Council further recommended that all members providing military forces and other assistance do so under the unified command of the United States and authorized "the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating."[31] Fifteen states, in addition to the United States, contributed combat units to fight in the "international field force" under the United Nations Command. In August 1950, the Soviet Union returned to the Security Council and vetoed all further resolutions

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From Stalin to Kim Il Sung: The Formation of North Korea, 1945-60 (London, Hurst and Company, 2002), p. 61.

[28] The DPRK has always claimed that the Korean War was initiated by an attack by ROK forces. However, archival material from the Soviet Union confirms the stated sequence of events. For example, see "Top Secret Report on the Military Situation in South Korea from Shtykov to Comrade Zakharov", 26 June 1950, History and Public Policy Program Digital Archive, Collection of Soviet military documents obtained in 1994 by the British Broadcasting Corporation for a BBC TimeWatch documentary titled "Korea, Russia's Secret War" (January 1996). Available from http://digitalarchive.wilsoncentre.org/document/110686.

[29] In favour of Security Council Resolution 82 (1950) were the United Kingdom, the Republic of China (Taiwan), Cuba, Ecuador, France, Norway and the United States. The Kingdom of Egypt, India and the Socialist Federal Republic of Yugoslavia abstained.

[30] The Soviet Union had assumed that the Security Council would not be able to discharge its functions under article 27, paragraph 3 of the United Nations Charter: "Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members". The other members of the Security Council decided that a member's absence could not prevent the body from carrying out its functions.

[31] Security Council Resolution 84. Those States contributing forces included: Australia, Belgium, Canada, Colombia, Ethiopia, France, Greece, Luxembourg, the Netherlands, New Zealand, the Philippines, South Africa, Thailand, Turkey and the United Kingdom. Five States contributed medical support: Denmark, India, Italy, Norway and Sweden.

concerning the Korean War. The debate on Korea then shifted to the United Nations General Assembly.[32]

104. The ensuing months yielded a string of successes for the forces of the DPRK. By the end of August 1950, the DPRK's military controlled 90 per cent of the Korean peninsula. However, an amphibious landing of United States troops under General Douglas MacArthur in Incheon in September 1950 turned the tide. With the support of the United Nations now behind them, the ROK forces marched northward and recaptured Seoul. General MacArthur pushed UN-backed forces up to the Chinese border despite warnings from the Chinese. By November 1950, the ROK supported by the United Nations Command controlled 90 per cent of the peninsula. The People's Republic of China then sent hundreds of thousands of troops to bolster the Korean People's Army. They succeeded in pushing United Nations and ROK forces back beyond the 38th parallel. The DPRK in its subsequent accounts of the war has minimized the decisive role played by the Chinese "volunteers".[33] Nevertheless, Chinese forces carried the main military burden for the rest of the war.[34] The DPRK has consistently downplayed the extent of outside assistance that it received not only during the war but in rebuilding after the war and then sustaining its post-war economy. The counter-offensive by United Nations forces reduced the gains made by the Korean People's Army and caused massive destruction in the North. Thereafter, two years of bitter stalemate ensued. During this time, more bombs were dropped on the DPRK than had been deployed in the entire Pacific theatre during World War II.[35] The devastation caused to all parts of the Korean peninsula was enormous.[36]

105. The Korean War ended in 1953 in a ceasefire. On 27 July 1953, the Armistice Agreement was signed by Lieutenant General of the United States Army William K. Harrison, Jr., for the United Nations Command, and General of the Korean People's Army Nam Il for the Korean People's Army and the Chinese People's Volunteers. Over 2 million

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[32] On 3 November 1950, the General Assembly adopted the "Uniting for Peace" Resolution (377 A) stating: "that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security." The resolution affirmed that the General Assembly may recommend collective action including the use of force, despite the UN Charter which gives power to the Security Council on all matters relating to international peace and security. On 1 February 1950, the General Assembly adopted Resolution 498, finding that the People's Republic of China was "engaging in hostilities against United Nations forces" in the DPRK and called on "all States and authorities to continue to lend every assistance to the United Nations action in Korea".

[33] The People's Republic of China also characterized participation by Chinese soldiers in the Korean War as action by "volunteers" in keeping with its depiction of the conflict on the peninsula as an internal armed conflict.

[34] Andrei Lankov, *From Stalin to Kim Il Sung*, pp. 61-62.

[35] Hwang Jang-yop notes in his memoirs, "In the November of 1953, I came back to Pyongyang from life in Moscow. Pyongyang was not what it had been before I left. There was literally not a single decent house on the ground; only huts filled the city." From *Hwang Jang-yop Hoegorok* (Hwang Jang-yop's memoirs) (Published in Korean by Zeitgeist, 2006, translated by Daily NK), 21.

[36] A report issued by the Ministry of External and Inter-German Trade of the German Democratic Republic indicated that the steel, non-ferrous metal, cement and fertilizer industries of the DPRK were entirely destroyed and that the overall capacity of state businesses had been reduced to 15-20 per cent. The report is cited in Liana Kang-Schmitz, "Nordkoreas Umgang mit Abhängigkeit und Sicherheitsrisiko", PhD dissertation, The University of Trier, 2010, pp. 59-60. Also available from http://ubt.opus.hbz-nrw.de/volltexte/2011/636/pdf/Nordkorea_DDR.pdf.

Koreans had been killed. Around 600,000 Chinese and over 36,000 United States combatants died.[37] Other nationalities' fatalities include over 1,000 from the United Kingdom, and hundreds from Australia, Belgium, Canada, Colombia, Ethiopia, France, Greece, the Netherlands, the Philippines, Thailand and Turkey. Grave breaches of international humanitarian law were reportedly committed on both sides.[38] United States military historian S.L.A. Marshall called the Korean War the "century's nastiest little war". It has also been referred to as the Forgotten War in the United States.[39] The conflict, however, is far from forgotten in the DPRK where the war sacrifices were used to bolster the narrative of Kim Il-sung's "forging of the nation". In the DPRK, the authorized history remains that the Fatherland Liberation War was started by the United States, and that Kim Il-sung not only defended the nation but wrought devastation on the American military. This rhetoric continued for decades. For example, food aid from the United States provided during the mass starvation in the 1990s was reportedly explained to the population as war reparations.[40]

106. The legacy of the Korean War remains unresolved. The Armistice Agreement recommended a political conference within three months of the ceasefire. The 1954 Geneva Conference was attended by the Republic of Korea, the DPRK, China, the Soviet Union, and 16 of the 17 states that had contributed forces under the United Nations Command. After two months, these talks collapsed and have not resumed. There has not been a comprehensive peace treaty. On both sides of the border, there remains fear of invasion and infiltration. In the DPRK, this fear has been instrumental in maintaining a state of emergency invoked to justify harsh governmental rule and its accompanying human rights violations. In this context, perceived political dissidents have been branded as spies in the service of foreign powers. Shortages in food and other essential means of survival have been blamed on a hostile outside world. The ROK likewise experiences the insecurities of the unresolved war, which the country addresses through general conscription and other security measures. These security measures include restrictions that appear to infringe on the human rights of its citizens in particular respects such as the freedom of expression.[41]

107. The United States by 1954 was disassociating its forces from the United Nations Command and continued its engagement in the ROK through the United States-ROK Mutual Defence Treaty. At the same time, the other states that had committed troops to the United Nations Command withdrew most or all of their forces. The United States maintains a military presence in the ROK of about 28,500 people.

108. Throughout the 1960s and 1970s, there were daily exchanges of fire along the demilitarized zone killing some 900 soldiers and civilians. In 1967, the DPRK sought to destabilize the ROK by utilizing its secret services. In 1968, 31 men from Unit 124 of the

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[37] Casualty figures still vary significantly by source. These figures come from the United States Department of Defense in 2000 and the Encyclopaedia Britannica.

[38] Bruce Cummings, *The Korean War: A History* (New York, Modern Library, 2010), pp. 172, 187 and 190.

[39] Samuel Lyman Atwood Marshall was a chief United States Army combat historian during World War II and the Korean War. David Halberstam, *The Coldest Winter*, pp. 1-2.

[40] Seven million bags with American logos were used to distribute food aid provided by the United States in response to the food crisis of the 1990s; these bags were seen by DPRK citizens as they were re-used and appeared in markets. Andrew Natsios, Washington Public Hearing, 31 October 2013, morning (01:48:00).

[41] The ROK's own domestic legal framework is influenced by its ongoing conflict with the DPRK. Among the ROK's own human rights challenges are the government's interpretation of the six-decade-old National Security Law and other laws to limit freedom of expression as well as the jailing of conscientious objectors to military service. See the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/17/27/Add.2).

DPRK's special forces attempted to enter the Blue House in Seoul in an unsuccessful attempt to assassinate President Park Chung-hee. Nevertheless, in 1972, following secret negotiations between Kim Il-sung's brother Kim Yong-ju and the ROK's chief intelligence officer Yi Hu-rak, the ROK and DPRK released a joint statement on achieving reunification peacefully without the use of military force or external forces. Despite these developments, the DPRK sponsored a number of terrorist acts against civilian targets of the ROK. These included: the 1983 attempted assassination of the ROK President Chun Doo-hwan in Yangon through a bombing that killed 21 people including four Myanmar nationals; the 1986 Gimpo Airport bombing that killed five people; and the 1987 Korean Airlines bombing that killed 115 people. These actions contributed to the increasing international isolation of the DPRK.

109. The wounds inflicted by the Korean War were deep and are still felt. The Commission acknowledges the suffering that has occurred on both sides of the border.

D. Imposition of the Supreme Leader (*suryong*) system

110. While Confucian principles have remained enmeshed in Korean culture, in the North they were in many ways instrumentalized by Kim Il-sung in the effort to consolidate his authority and that of the Workers' Party of Korea under his control. The relationship between sovereign and subject that is enunciated as a mutually binding one under traditional Confucian precepts has been stretched to one of absolute obedience to the leader as articulated in the *suryong*, or Supreme Leader, system[42] established by Kim Il-sung and carried on under Kim Jong-il and Kim Jong-un. The "Mandate of Heaven", a Confucian principle, is the right to rule granted to ancient Korean rulers by the gods. This mandate conveyed obligations on rulers to rule justly and fairly and for the benefit of all the people. The *Suryong* system positioned Kim Il-sung (and his heir apparent) as unchallenged rulers due to their proclaimed wisdom and benevolence under which the general population would live in a prosperous and righteous society. In this way, the *suryong* system has facilitated the unchecked violation of human rights in the DPRK.

111. In 1949, Kim Il-sung secured his designation as *Suryong*, Supreme Leader. In order to eliminate any opposition to his rule, he established a system of governance built on an elaborate guiding ideology, a single mass party led by a single person, a centrally-planned economy, a monopoly on the means of communication, and a system of security that employed violence and a political police. As a matter of priority, the DPRK built up its state security apparatus. The Ministry of Internal Affairs, modelled on the Soviet security system, with 4,000 to 5,000 headquarters staff, was comprised of 12,000 regular police, 3,000 political police, and 45,000 employees within the Security Guard units, Border Constabulary and Railroad Brigade. The Political Security Bureau within the Ministry was responsible for ensuring loyalty to the regime by uncovering and stopping resistance to authority and subversive activities. The Political Security Bureau also provided operational guidance to the Political Defence Bureau within the Ministry of Defence, which carried out the same functions within the military. The security system also employed an informant network of 400,000 people, an estimated 5 per cent of the population at that time.[43]

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[42] The *Suryong* (supreme leader) system embeds all powers of the state, party and military under one singular leader.

[43] Ken E. Gause, "Coercion, Control, Surveillance and Punishment: An Examination of the North Korean Police State", The Committee for Human Rights in North Korea, 2012, pp. 88-91. (Exhibit W07). Also available from http://www.hrnk.org/uploads/pdfs/HRNK_Ken-Gause_Web.pdf.

112. Having already commenced in the early stages of Kim Il-sung's rule, the persecution of political and ideological opponents intensified during the Korean War.[44] A large number of Koreans—estimates range from 685,000 to millions—moved to the South during the war.[45] Before 1945, Protestant Christians were a politically active and substantial population but many departed North Korea. The remaining population was often subject to suspicion. Many were arrested, imprisoned or executed. In 1951, Kim Il-sung reorganized the Ministry of Internal Affairs and transformed the Political Security Bureau into its own new ministry, the Ministry of Public Security, to suppress political opposition more effectively.

113. After the Korean War, Kim Il-sung turned his focus to further consolidating his power through a series of purges targeting rival factions. The factional struggle within the leadership was comprised of four groups. The Domestic Faction, numbering about 500, was Koreans who had worked through the underground Communist movement through the colonial period. Many of them had moved to the North from the South. The Yanan Faction were Koreans who had left for China in the 1920s and 1930s, initially basing themselves in Shanghai then moving with the Communists to their civil war headquarters of Yanan. The Soviet Korean Faction, ethnic Koreans born or raised in the Soviet Union, numbered between 150 and 200. Kim Il-sung was able to play one faction against another while supporting his own Guerrilla Faction, those Koreans who fought against Japanese forces in Manchuria with him. In December 1952, Kim Il-sung denounced factions in a long speech to the Plenum of the Central Committee of the Party. In 1953, rumours of an aborted coup attempt by the Domestic Faction led to the arrest of their leaders. Twelve members of this group, leaders of the South Korean Workers' Party responsible for organizing guerrilla activities in the South, were charged with planning a coup and spying for the United States. On the basis of trials that were highly orchestrated and heavily publicized, ten were convicted and sentenced to death while two were given long prison sentences.[46]

114. Kim Il-sung continued to face pressure within the leadership over his increasingly autocratic rule and emerging cult of personality as well as the direction of his economic policies. After 1953, the Soviet Union was itself undergoing a campaign of "de-Stalinization" that did not comport with Kim Il-sung's efforts to consolidate his own rule. Instead, the Soviet Union was promoting collective leadership, peaceful co-existence and an end to the excesses of the Stalin era.

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[44] The official biography of Kim Il-sung, published by the DPRK, notes the following: "In December 1945, Kim Il Sung convened the Third Enlarged Executive Committee Meeting of the Central Organizing Committee of the CPNK in order to crush the machinations of the factionalists and local separatists who had been hindering the implementation of the Party's organizational line, and radically improve Party work … The meeting took a historic measure to strengthen the Party's central leadership organ by acclaiming Kim Il Sung as its head, and meted out stern punishment to the factionalists who had contravened the instructions of the Party Centre and violated Party discipline." *Kim Il Sung: Condensed Biography*, pp. 122-123.

[45] According to the 1955 population and housing census conducted by the ROK Central Statistical Office, 735,501 persons of the total population had come from the North (before and during the Korean War). Korea Institute for National Unification (KINU), *White Paper on Human Rights in North Korea* (2013), p. 509. During the Armistice negotiations, the DPRK insisted that 500,000 Koreans who had been "taken away" from the North during the hostilities had to be returned. Transcript of Proceedings of the Armistice Negotiations of 1, 3 and 12 January 1952, as reflected in Korean War Abduction Research Institute, *People of No Return: Korean War Abduction Pictorial History* (Seoul, 2012), pp. 56-58. The Commission received no information indicating that those who left the North during the war were forcibly abducted.

[46] Andrei Lankov, *From Stalin to Kim Il Sung*, pp. 78-109.

115. In August 1956, the members of the Yanan Faction openly criticized Kim Il-sung during the Party's Central Committee Plenum. According to a Soviet account, one official "attacked Kim Il-Sung for concentrating entire state and Party power in his hands".[47] The leaders of the Yanan faction who had tried to orchestrate the "August Conspiracy" were out-maneuvered by Kim Il-sung who isolated them before purging the rank and file of the faction members.[48]

116. In response to the criticism within the Party against his rule, Kim Il-sung expanded the Ministry of Internal Affairs to undertake what became one of the DPRK's first large scale purges. On 30 May 1957, the Standing Committee of the Central Committee of the Workers' Party of Korea adopted the resolution "On the Transformation of the Struggle with Counter-Revolutionary Elements into an All-people All-Party movement" (May 30th Resolution) to evaluate the political background of every adult in the DPRK. These developments were to become a turning point for the DPRK. Earlier purges had differed in that they had targeted specific groups of people, such as landlords, Christians and high-ranking Party members who were potential rivals to Kim Il-sung.[49] This purge, lasting until 1960, resulted in thousands of executions, often in public. Pang Hak-se, the Minister of Public Security, told a Soviet diplomat that 100,000 people were exposed as "hostile and reactionary elements" between 1958 and 1959.[50] In 1959, the Ambassador of the German Democratic Republic to the DPRK also reported to his capital that, "In recent times, the persecution of comrades who express a different opinion has been increased. They are being sent to rural areas, mines, hydropower dams and also into prison camps."[51] In order to sustain the large-scale purges of the late 1950s, a system of secret political prison camps was set up, which was later expanded.[52]

117. The May 30th Resolution effectively launched the *Songbun* system. *Songbun* translates literally as "ingredient" but effectively means background. It is a system through which the state categorizes citizens of the DPRK into classes based on their perceived political allegiance to the regime, ascertained by reference to family background and

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[47] Record of conversation between the First Secretary of the Soviet Embassy G. Ye. Samsonov and the departmental head of the Korean Workers' Party Central Committee Ko Hui-nam from Soviet archives. Andrei Lankov, *From Stalin to Kim Il Sung*, p. 169.

[48] According to the DPRK's official biography of Kim Il-sung: "At a plenary meeting of the Party Central Committee held in August 1956, Kim Il Sung took resolute measures to expose and eliminate the anti-Party, counterrevolutionary factionalists who flew in the face of the Party. … The anti-Japanese revolutionary veterans and other attendants at the meeting delivered a telling blow to this desperate challenge. The sectarian group subjected to exposure and destruction during the meeting was not a mere faction but an atrocious anti-Party and counterrevolutionary clique that attempted to overthrow the Party and the government in collusion with the US imperialists." *Kim Il Sung: Condensed Biography*, pp. 200-201.

[49] Andrei Lankov, "The Repressive System and Political Control in North Korea", English version of a chapter from Severnaia Koreia: vchera i segodnia (North Korea: Yesterday and Today), published in Russian in 1995 (Moscow, Vostochnaia literatura). Available from http://north-korea.narod.ru/control_lankov.htm.

[50] Andrei Lankov notes public executions became a customary practice in the DPRK in the 1950s. He cites Soviet archives for Pang Hak-se's conversation with Counsellor V. I. Pelishenko. "Kim Takes Control: The "Great Purge" in North Korea, 1956-1960", *Korean Studies*, vol. 26, No. 1 (2002), pp. 98-105.

[51] Cited from a diplomatic cable sent in 1959 by the Ambassador of German Democratic Republic (GDR). In 1957, the GDR Embassy already noted information according to which students who had returned from Poland had been sent to prison camps in Pyongyang that were guarded by soldiers. For a citation of the original German texts, which were found in GDR archives after reunification, see Liana Kang-Schmitz, "Nordkoreas Umgang mit Abhängigkeit und Sicherheitsrisiko", pp. 225-226.

[52] See section IV.D.3.

particular actions taken by family members. Based on this assessment, citizens fall into three broad classes: core, wavering and hostile.[53] Decisions about residency, occupation, access to food, health care, education and other services are contingent on *songbun*. While the official *songbun* structure was quite elaborate and changed over time, its main feature has been the unchallengeable nature of the designation which is inherited mainly through the paternal line[54] Following the May 30th Resolution, the Cabinet issued Decree No. 149 prohibiting members of the hostile class from residing near the Demilitarized Zone or coastal areas, within 50 km of Pyongyang or Kaesong, or within 20 km of any other large city. In effect, a large number of people were forcibly transferred to the rough mountainous regions in the northern part of the country where special settlements were created for these exiles.[55]

118. After the Korean War ended in 1953, the DPRK government collectivized agriculture and established a centrally-planned economy based largely on heavy industry. Those people who remained on farms were allowed to keep a small proportion of their production while the rest was taken by the state. The government assigned people to compulsory employment.[56] In 1957, the DPRK instituted the Public Distribution System to provide food and to ration other goods. As the DPRK was highly urbanized, an estimated 60 to 70 per cent of the population relied on the state for these food distributions. The Public Distribution System suppressed private production and monopolized distribution of food and household necessities. The entire economic framework of the country, and in particular the Public Distribution System, became an important means of social, economic and political control.[57]

119. By the early 1960s, Kim Il-sung successfully suppressed public dissent. Any critical remark about the political or economic situation could, and not infrequently did, lead to imprisonment and worse. According to Russian observers who were in the DPRK at the time, arrests and even executions were imposed for an attitude deemed to be excessively warm towards the Soviet Union, as well as any positive remarks about the scientific, technical, or cultural achievements of other countries.[58]

120. While the threat of these extreme human rights violations constituted a form of terror deployed against the general population, Kim Il-sung continued periodically to instigate purges within the leadership of the party and military.[59] For example, in 1964,

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[53] This classification appears to have been revised at various points, and later the three broad categories became the core, basic and "complex", which includes both the wavering and hostile classes.

[54] See section IV.B.

[55] Ken E. Gause, "Coercion, Control, Surveillance and Punishment", p. 101.

[56] In December 2003, the Committee on Economic, Social and Cultural Rights in its concluding observations of the DPRK's initial report, expressed concern "that the right to work may not be fully assured in the present system of compulsory state-allocated employment, which is contrary to the right of the individual to freely choose his/her career or his/her workplace" (E/C.12/1/Add.95).

[57] See section IV.D.

[58] Andrei Lankov, "The Repressive System and Political Control in North Korea". See also section IV.E.

[59] The First Secretary of the Polish Embassy in Pyongyang noted in 1958, "In the party and in private life it would be unthought-of to express the smallest critique or to express doubts regarding the correctness of this or that party directive from the party or the government. If one does critique, then along the lines of the formulations used in official speeches. I.e., first one needs to point to a large number of achievements and then criticize what is officially being criticized. If one does not want to be deprived of the means of support and of all perspectives for the future, including removal from Pyongyang, one must act this way only." "Notes from a Conversation between the 1st Secretary of the PRL Embassy in the DPRK with the Director of a Department in One of the Ministries", 05 January 1958, History and Public Policy Program Digital Archive, Polish Foreign Ministry Archive. Obtained

after the resolution "On Further Strengthening the Work with Various Groups and Strata of the Population" was adopted by the 8th Plenum of the Party's Central Committee, a new campaign was launched to further refine the *Songbun* system. Between 1964 and 1969, this work was conducted by specially created groups. This exercise led to more people being exiled, arrested and executed as enemies of the regime.[60]

121. From the early days of the DPRK, Kim Il-sung and the Workers' Party of Korea had employed the law and the justice system for purposes of maintaining the Party's supremacy and suppressing political dissent. In his March 1958 speech "For the Elaboration of the Judicial Policy of our Party", Kim Il-sung explained that the dictatorial functions of the judicial, procuratorial and public security organs should be enhanced. He said that "the DPRK's laws should serve as a weapon to champion socialism" and emphasized that "all the workers of the judicial organs should be true to the Party's leadership and intensify the struggle against counter revolutionaries by firmly relying on the judicial policy of the Party".[61] According to official DPRK sources, Kim Jong-il carried on with the approach of making the justice system, and judges in particular, subject to the instructions of the Workers' Party of Korea. According to official DPRK sources, Kim Jong-il "saw [to it] that Party committees at all levels were strengthened and their functions and roles were improved in order to intensify Party guidance over … public security work, and judicial and procuratorial work."[62]

122. The political function of the law and the justice system has also been entrenched in the DPRK's criminal legislation, starting with the 1950 Criminal Code, which borrowed language from the Criminal Act of the Soviet Union that was in force under Joseph Stalin. Many of the overt references to the function of criminal law as a tool of political control were removed in subsequent revisions. However, the present criminal law of the DPRK still requires the state to carefully identify friends and enemies of the state in its struggle against "anti-state and anti-people crimes", and to subdue the small minority of enemies.[63] Furthermore, the state is tasked to rely on the power and wisdom of the masses in its handling of criminal cases,[64] rather than to impartially apply the law. Moreover, the Criminal Code currently in use defines "Crimes against the state or the people" (called anti-revolutionary crimes in the past) in such broad and vague terms that the exercise of any number of human rights can be prosecuted as a crime.[65]

123. To the extent that the law and the justice system serve to legitimize violations, there is a rule *by* law in the DPRK, but no rule *of* law, upheld by an independent and impartial judiciary. Even where relevant checks have been incorporated into statutes, these can be disregarded with impunity. Decisions of the Workers' Party of Korea and the Supreme Leader are generally considered to override formal laws. This principle is reflected in article 11 of the Constitution according to which the DPRK conducts all activities under the

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by Jakub Poprocki and translated by Maya Latynski. Available from http://digitalarchive.wilsoncentre.org/document/111732.

[60] These were called "620 groups" specially created for this purpose. Andrei Lankov, "The Repressive System and Political Control in North Korea".

[61] *Kim Il Sung: Condensed Biography*, pp. 207-208.

[62] *Kim Jong Il: Brief History* (Pyongyang, Foreign Languages Publishing House, 1998), p. 51.

[63] Article 2, Code of Criminal Procedure. Anti-state and anti-people crimes are set out in articles 59 ff. of the Criminal Code and comprise of vaguely worded and extremely broad offenses targeting political activities.

[64] Article 3, Criminal Code.

[65] See section IV.E.5.

leadership of the Party.[66] The Constitution also establishes that orders of the Supreme Leader supersede laws or other directives.[67] The political function of the judiciary is inscribed in article 162 of the Constitution, which, among other tasks, requires the courts to protect through judicial procedure state power and the socialist system and to staunchly combat class enemies. The superiority of executive orders and the political function assigned to the courts severely curtails the independence and impartiality of the judges.

124. Formally, judges in the DPRK are appointed by and accountable to the Supreme People's Assembly and provincial people's assemblies. One former official, however, directly acquainted with the process, indicated that judges are in practice selected by and subject to the orders of the Supreme Leader and the Workers' Party of Korea.[68] As a matter of law, the courts are reportedly also subject to the detailed oversight of the Office of the Prosecutor, which is legally required to consider each case to determine whether a hearing has been conducted at the right time and in the correct manner as required by law.[69]

125. In the 1960s, after Kim Il-sung had eliminated his potential rivals who were largely affiliated with the Chinese and Soviet factions, he actively distanced himself from the Soviet Union and China. China by 1966 was in the throes of the Cultural Revolution which caused great human suffering and disruptions that threatened to spill over into the DPRK.[70] As Kim Il-sung also reduced contact with the Soviet Union and East European socialist states, economic assistance from these countries, which had been substantial, likewise began to dwindle.[71] At the same time, he expanded his cult of personality and set out a policy of self-reliance and extreme nationalism known as *Juche*.[72] Kim Il-sung promoted

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[66] It is even more expressly entrenched in the reported Ten Principles for the Establishment of the One-Ideology System. Principle 5.3 reportedly stipulates that Kim Il-sung's instructions must be viewed as a legal and supreme order.

[67] According to article 109 of the DPRK Constitution, the National Defence Commission has the duty and the authority to abrogate the decisions and directives of state organs that run counter to the orders of the Chairman of the National Defence Commission and to the decisions and directives of the National Defence Commission. Article 100 stipulates that the Chairman of the National Defence Commission is the Supreme Leader of the DPRK.

[68] TLC037. Witnesses who were confidentially interviewed by the Commission are identified by only a six digit code. The identity of each witness is known to the Commission.

[69] Article 11 of the Prosecutory Supervision Law, as stated in KINU, *White Paper on Human Rights in North Korea* (2013), p. 174.

[70] In the late 1950s to early 1960s, in the wake of the massive famine brought on by China's Great Leap Forward, it is estimated that between 50,000 and 70,000 ethnic Korean Chinese emigrated to the DPRK.

[71] From World War II until 1984, it is estimated that the DPRK received $4.75 billion in aid from the Soviet Union (roughly 50 per cent), China (20 per cent) and the Soviet-aligned countries of Eastern Europe (30 per cent). Victor Cha, *The Impossible State: North Korea, Past and Future* (New York, Ecco, 2012), p. 28. For a detailed overview of assistance received between 1953 and 1960 from not only the Soviet Union and China but also East Germany, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, Mongolia and North Vietnam, as well as the breakdown of Soviet aid by product such as rolling metal, tires and sugar, see Stephen Kotkin and Charles Armstrong, "A Socialist Regional World Order in North East Asia After World War II", in *Korea at the Center*, Charles K. Armstrong and others, eds, p. 121.

[72] According to the Embassy of the German Democratic Republic in 1961: "The cult of personality surrounding Comrade Kim Il Sung has been growing steadily for some time. Everything the Party and the Korean people earn is attributed to Comrade Kim Il Sung. There is no room, no classroom, no public building in which a photo of Kim Il Sung cannot be found. The Museum of the War of National Liberation is designed entirely around the role of Kim Il Sung. There are no less than 12 figures of Kim Il Sung in the rooms of the museum, each larger than the next. The history of the revolutionary war and the formation of the Communist Party of Korea are not correctly portrayed.

the *Juche* ideology in conjunction with a policy to focus on military readiness under the Four Military Lines doctrine.

126. *Juche* has been variously called a philosophy, an idea and an ideology. First espoused in a speech in December 1955 entitled "On Eliminating Dogmatism and Formalism and Establishing Juche in Ideological Work", Kim Il-sung called for a Korea-centred revolution rather than one designed to benefit another country or the international fraternal movement. According to *Juche* ideology, citizens should develop the potential of the nation through its own resources and human creativity as guided by the Supreme Leader. Wherever the leader conveys his wisdom through instructions, it was the duty of the people to learn from him. As Confucianism placed high value on enlightenment achieved by mastering of the classics and applying these lessons, the DPRK imposed rigorous and constant study sessions of Kim Il-sung's works, particularly those dealing with *Juche*, on all citizens young and old.[73]

127. *Juche* principles underlie the economic system established by the leadership. *Juche* requires self-sacrifice and hard work. Therefore, *Juche* became another element of control, as self-reliance meant that the state would provide all the needs of the people through the labour of the people, the natural resources of the land and the ingenuity of their efforts but required that the people follow the guidance of the state. Thus, the solution to any shortfall in the needs of the country were to be found in intensified campaigns to increase production through more enthusiastic labour and longer hours.[74] The country would not use trade to

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The decisive role of the Soviet Union in the liberation of Korea is completely downplayed. Its role is addressed on only a single panel. This is also expressed in the materials as well as in films and depictions. Thus, a legend of Kim Il Sung has been created that does not correspond to the actual facts if one considers what Comrade Kim Il Sung has actually done. Party propaganda is not oriented toward studying the works of Marxism/Leninism, but rather is solely and completely oriented toward the "wise teachings of our glorious leader, Comrade Kim Il Sung. Many rules of Party life, such as the link to the masses, are portrayed as if they were discovered by Kim Il Sung rather than by Marx, Engels, and Lenin. There are almost no articles or events in which Comrade Kim Il Sung is not mentioned. It is also a fact that all of those who are not in agreement with such an approach are characterized as sectarians, and recently as revisionists." "Report, Embassy of the GDR in the DPRK to the Foreign Policy and International Department of the Socialist Unity Party, GDR" 14 March 1961, History and Public Policy Program Digital Archive, SAPMO-BA, Dy 30, IV 2/20/137. Translated by Grace Leonard. Available from http://digitalarchive.wilsoncentre.org/document/112303.

[73] Kim Jong-il explained: "Under the guidance of the great leader Comrade Kim Il Sung, our Party and our people have firmly maintained the Juche character and properly sustained the national character in the revolution and construction and thus advanced the Juche revolutionary cause victoriously. The respected leader Comrade Kim Il Sung was a great thinker, theoretician and a great statesman who advanced the idea of preserving the Juche character and national character for the first time in history, translated it brilliantly into reality and gave successful leadership to the revolution and construction. Keeping and embodying the Juche character and national character is the principled requirement of the revolution and construction elucidated by the Juche idea created by the great leader Comrade Kim Il Sung. The Juche idea, the man-centred outlook on the world, is a noble idea of loving the people as well as an idea of true love for the country and nation; it is a great revolutionary idea of our times which illuminates the road of advancing the cause of world independence forcefully. The Juche idea clarified that the country and nation are the basic unit for shaping the destiny of the masses and that the popular masses must firmly maintain the Juche character and national character of the revolution and construction in order to shape their destiny independently. "On Preserving the Juche Character and National Character of the Revolution and Construction", 19 June 1997. Available from http://www.korea-dpr.com/lib/111.pdf.

[74] According to Andrei Lankov, 1957 saw "the first and, perhaps, most famous of the endless mobilization campaigns that later became so typical of North Korean society. In 1957 Kim Il Sung launched the much trumpeted 'Ch'ŏllima (Flying horse) movement' which was initially an imitation

address the structural difficulty in producing sufficient food for the population but find unique strategies to overcome it. The DPRK's solution to inhospitable growing conditions was to develop one of the most input-intensive agricultural system in the world, one with complete dependency on fertilizers and pesticides.[75]

128. *Juche*, however, did not prove to be an appropriate basis for an effective economy. The industrial inheritance from the Japanese and the input-intensive agriculture was maintained for some decades with the support of the largesse from the Soviet Union and China. In the mid-1970s, per capita GNP in South and North Korea was about the same. Once assistance from outside dried up the DPRK did not have the skills or the political will to address its deeply rooted economic problems. For a brief period in the 1970s, the DPRK attempted to borrow funds from the international community. However, the state had no plans on how to re-pay these debts or how to invest these resources into the development of the country. The DPRK went into default on billions of dollars and was unable to borrow further. The choices that the leadership made over the years led to serious food shortages long before the famine of the 1990s. Recurring patterns of shortages are reported as early as 1945-46, 1954-55 and 1970-73.[76] Survival of the political system and its leadership rather than systemic economic development or concern about feeding its population appears to have been the priority of the DPRK leadership.

E. Consolidation of power under the Kim dynasty

129. Kim Jong-il spent 20 years preparing for his succession to power. According to reports, it had actually been his uncle, Kim Yong-chu, his father's younger brother, who had been the original presumptive heir to Kim Il-sung. Kim Jong-il was eventually able to side-line his uncle and win the confidence of his father particularly through his efforts to expand the cult of personality of Kim Il-sung. It was really in 1972 that the intensity of the cult of personality of Kim Il-sung surpassed those of Mao Zedong or Joseph Stalin. DPRK citizens began to wear badges with his picture in addition to hanging his portrait on their walls. Kim Jong-il had been serving in the Party's powerful propaganda and organization departments until he organized the Fifth Party Congress in 1970 which proclaimed *Juche* as the monolithic ideology of the DPRK and further enhanced his father's cult of personality thereby setting in motion the process for his succession. Around this time, Kim Jong-il introduced Kimilsungism, a concept linked to *Juche*.[77] Kim Il-sung's cult of personality

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of some contemporary Soviet schemes but soon came to be influenced by and modelled after the Chinese Great Leap Forward. The people were encouraged to work more and more, to do their utmost to achieve high (and often unrealistic) production targets." Andrei Lankov, "Kim Takes Control: The "Great Purge" in North Korea, 1956–1960", *Korean Studies*, vol. 26, No. 1 (2002). Other subsequent examples include October 1974 when the "entire Party, the whole country and all the people" started a 70-day campaign to fix the mining industry, exports and transport which resulted, according to Kim Jong-il's official biography, in a 70 per cent increase in industrial production and gross industrial output value for the year increased by 17.2 per cent over the previous year. *Kim Jong-il: Brief History*, pp. 57-58.

[75] Stephen Haggard and Marcus Noland, *Famine in North Korea* (New York, Columbia University Press, 2007), Chapter 2.

[76] Haggard and Noland, *Famine in North Korea*, Chapter 1.

[77] "We call the leader's revolutionary thought Kimilsungism because the idea and theory advanced by him are original. The definition that Kimilsungism is a system based on the idea, theory and method of Juche means that Kimilsungism is consistent with the Juche idea in content and that it forms a system based on the idea, theory and method in composition. Both in content and in composition, Kimilsungism is an original idea that cannot be explained within the framework of Marxism-Leninism. The Juche idea which constitutes the quintessence of Kimilsungism, is an idea newly

became an important instrument of Kim Jong-il's consolidation of his own succession, as his father was the main source of his legitimacy to rule the nation.[78]

130. The Central Committee of the Workers' Party of Korea appointed Kim Jong-il as the Party's Secretary for Organization and Guidance. This put him in control of the appointment process and system of inspections. He used this position to build his power base, sending inspection teams to every party and government organization down to the local level. Thus he was able to establish a dedicated reporting system to monitor all information and to link important officials to his patronage network. With the 1972 Constitution, Kim Jong-il reorganized the state administration and further expanded the state security apparatus. At this time, a new State Security Department was set up that reported directly to Kim Jong-il and supported the succession process.

131. Once the Central Committee elected Kim Jong-il to membership of the Politburo and endorsed his selection as Kim Il-sung's heir in 1974, he deepened the ideological basis of the *Suryong* system. Kim Jong-il announced the "Ten Principles in Establishing Party's Monolithic Ideological System"[79] which called for "unconditional obedience" and "all our loyalty" to Kim Il-sung. Moreover, article 10.1 of the Ten Principles declares that "(t)he entire party and society will adhere strictly to the one-ideology system, and establish the one and only leadership of the Central Party so as to complete in shining glory revolutionary achievements of the Great Leader." The "Central Party" was understood to mean Kim Jong-il.

132. In 1975, Kim Jong-il applied the "monolithic guidance system" to the military through three reporting lines: the General Political Bureau, the General Staff and the

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discovered in the history of human thought": Kim Jong-il, "On Correctly Understanding the Originality of Kimilsungism: Talk to Theoretical Propagandists of the Party", 2 October 1976 (Pyongyang, Foreign Languages Publishing House, 1984).

[78] Ambassador Franz Everhardt of the GDR Embassy in Pyongyang commented, "The economic situation in the DPRK is indeed extremely difficult and complicated. The main reasons for this are the cult of personality [surrounding Kim Il-sung] and the subjectivism deriving from it." Report from the GDR Embassy in the DPRK, "Note concerning a Conversation in Moscow on 12 May, 1976, with the Head of the Far East Department, Comrade Kapitsa, and the Head of the Southeast Asia Department, Comrade Sudarikov." 27 May 1976, History and Public Policy Program Digital Archive, Political Archive of the Federal Foreign Office, Berlin (PolA AA), MfAA, C 6857. Translated for NKIDP by Bernd Schaefer. Available from http://digitalarchive.wilsoncentre.org/document/114290.

[79] The Ten Principles, comprised of a total of 10 articles and 65 clauses, describes how to establish the one-ideology system: 1) We must give our all in the struggle to unify the entire society with the revolutionary ideology of the Great Leader Kim Il Sung. 2) We must honour the Great Leader comrade Kim Il Sung with all our loyalty. 3) We must make absolute the authority of the Great Leader comrade Kim Il Sung. 4) We must make the Great Leader comrade Kim Il Sung's revolutionary ideology our faith and make his instructions our creed. 5) We must adhere strictly to the principle of unconditional obedience in carrying out the Great Leader comrade Kim Il Sung's instructions. 6) We must strengthen the entire party's ideology and willpower and revolutionary unity, centreing on the Great Leader comrade Kim Il Sung. 7) We must learn from the Great Leader comrade Kim Il Sung and adopt the communist look, revolutionary work methods and people-oriented work style. 8) We must value the political life we were given by the Great Leader comrade Kim Il Sung, and loyally repay his great political trust and thoughtfulness with heightened political awareness and skill. 9) We must establish strong organizational regulations so that the entire party, nation and military move as one under the one and only leadership of the Great Leader comrade Kim Il Sung. 10) We must pass down the great achievement of the revolution by the Great Leader comrade Kim Il Sung from generation to generation, inheriting and completing it to the end. Translation from Joanna Hosniak, "Prisoners of Their Own Country", Citizens' Alliance for North Korean Human Rights, 2004 (Original Korean source from Korea Research Institute for Military Affairs). The Ten Principles were amended in 2013 to include references to Kim Jong-il.

military secret police. In 1980, Kim Jong-il was appointed to the Presidium of the Politburo and the Central Military Commission.[80] At this stage, he was officially ranked fifth within the DPRK's leadership. Nevertheless, only Kim Il-sung and Kim Jong-il held positions in all three of the Party's leadership bodies (the Politburo, Secretariat and Central Military Commission). Kim Jong-il subsequently shifted decision-making on all policies and personnel appointments from the Politburo to the Party Secretariat Office, his base of power. In 1991, he was appointed as supreme commander of the armed forces.

133. Despite Kim Il-sung's highly personalized approach to running the DPRK, he had formally involved the Party in decision-making and governance processes. In contrast, Kim Jong-il adopted a highly centralized, top-down leadership style that often relied on informal channels. He also moved his organizational base from the Workers' Party of Korea to the National Defence Commission which became the leading state body after the 1992 revision of the Constitution (the first revision since 1972).[81] In 1993, Kim Jong-il became chairman of the National Defence Commission.

134. Kim Il-sung died in 1994 at the age of 82. In 1997, Kim Jong-il further consolidated his grip on the state security apparatus when he transformed the Social Safety Agency into the Ministry of People's Security and expanded the overall apparatus. On the basis of these changes, the state security apparatus expanded into a system that rested on five pillars. These continue to be in place under the present Supreme Leader Kim Jong-un:[82]

1. The State Security Department[83] (*Kukgabowibu*, often referred to as simply *Bowibu*) is the primary political police. Legally mandated to investigate "Crimes against the state or the nation", it has the task of identifying and violently suppressing threats to the political system and the Supreme Leader;
2. In addition to regular policing functions, the Ministry of People's Security (*Inminboanseong*) also takes on certain political policing functions;
3. The Military Security Command (*Bo-wi Saryeong-bu*) serves as the political police of the Korean People's Army;
4. Apart from its ordinary prosecutorial function, the Office of the Prosecutor exercises legal and political monitoring roles; and
5. Special bodies within the Workers' Party of Korea at the Central Committee level monitor and police senior officials and the security agencies.

135. In practice, the distribution of roles between the respective security agencies has varied over time and between provinces, influenced by political priorities, available capacity, the relative power of senior officials and the extent to which a particular agency enjoyed the trust of the Supreme Leader. In many cases, the three main security agencies—State Security Department, Ministry of People's Security and Military Security

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[80] *Kim Jong-il: Brief History*, p. 80.

[81] In the 1992 Constitution, the National Defence Commission was elevated to a separate body from the Central People's Committee. Before this revision, the President held the position of National Defence Commission Chairman as the head of the military. This separation of power from the President effectively made the Chairman of the National Defence Commission the Chief Commander of the State exercising the highest military authority. Yoon Dae-kyu, "The Constitution of North Korea: Its Changes and Implications", *Fordham International Law Journal*, vol. 27, No. 4 (2003), p. 1299.

[82] For a detailed analysis of the activities of the security apparatus and their compliance with international human rights obligations see section V, in particular sub-sections V.A, V.B, V.B.1 and V.D.

[83] The *Kukgabowibu* is sometimes also translated as the National Security Agency or the Ministry of State Security.

Command—competed to show their efficiency in identifying ideological opponents to gain favour with Kim Jong-il. In relation to incidents or issues seen as major political threats, the Supreme Leader or central-level decision-making organs required security agencies to coordinate their investigations. There are reports that semi-permanent structures were set up by secret order of Kim Jong-il and maintained under Kim Jong-un.[84]

136. Following a three-year mourning period, Kim Jong-il was formally elected leader by the Supreme People's Assembly in 1998. The constitution was again revised in 1998, and Kim Il-sung was designated Eternal President. The revised constitution elevated the National Defence Commission to be the highest organ of the state, and thus its chairman, Kim Jong-il, to the highest position in the government.[85] Lacking the war hero credentials of his father, Kim Jong-il shifted the fundamental orientation of the state in his effort to win the support of the military by bestowing on it policy influence and prestige, as well as a large share of the national budget, through the *Songun*, or Military First, doctrine. This doctrine has survived the death of Kim Jong-il and the ascendancy of his son Kim Jong-un as his successor. On 25 August 2013, Kim Jong-un elaborated at length on the *Songun* doctrine during the Day of Songun celebration:

> Songun was the General's [Kim Jong-il] revolutionary idea, his practice in the revolution, his political ideal and his political mode.... Regarding the strengthening of the KPA [Korean People's Army] as the most important of affairs in the Songun revolution, he raised the KPA as the buttress, the main force, of our revolution and achieved the historic victory in the grim anti-imperialist, anti-US showdown in defence of the country's security and socialism by training the KPA to be the army of the leader boundlessly faithful to the cause of the WPK (Workers' Party of Korea), to be an invincible revolutionary army. He defined the spirit of defending the leader unto death, the spirit of implementing his instructions at any cost and the self-sacrificing spirit displayed by the service personnel as a revolutionary spirit symbolic and representative of the Songun era, as the revolutionary soldier spirit, and led all the service personnel and people to live and struggle in that spirit, thus ensuring that a great turn and changes were brought about in all sectors of the revolution and construction. In order to consolidate the successes of his Songun-based leadership and administer Songun politics in a comprehensive way, he saw to it that the First Session of the Tenth Supreme People's Assembly of the Democratic People's Republic of Korea adopted the Socialist Constitution that embodies the idea and principles of the Songun revolution and established a new state administration structure, whose backbone is the National Defence Commission, and led all state affairs to be conducted on the principle of giving precedence to military affairs.[86]

137. In keeping with the *Songun* orientation, the DPRK embarked on a quest to develop nuclear weapons and ballistic missiles.[87] The DPRK presently has the world's fourth largest

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[84] See section IV.

[85] Article 100 of the DPRK Constitution states: The Chairman of the National Defense Commission of the Democratic People's Republic of Korea is the supreme leader of the Democratic People's Republic of Korea.

[86] Kim Jong-un, "Let Us Forever Glorify Comrade Kim Jong Il's Great Idea and Achievements of the Military-First Revolution", *Rodong Sinmun* and *Chosun People's Army*, 25 April 2013. Accessed through Sino-NK, "Kim Jong-un and the Songun Retrenchment: A Quintessential Equation", 30 November 2013.

[87] In 1959, the DPRK signed its first agreement on cooperation in nuclear research with the Soviet Union. A similar agreement with China quickly followed. By 1965, the DPRK had a Soviet-designed research reactor, the IRT-2000, which it modernized through the 1970s. By the late 1970s, the DPRK's interest in the development of its nuclear capacity had shifted from energy production to

standing army with 1.2 million active troops and 7.1 to 8.3 million in paramilitary reserves. It is believed that the DPRK's military capability has been steadily decreasing due to obsolescence of equipment, difficulty in training, and lowering of standards for soldiers following the overall decline in nutritional status of the population and its subsequent impact on the height of prospective recruits. As the DPRK has experienced this decrease in capability, it has responded by focusing on the development of nuclear weapons and other "asymmetrical forces" such as special operations forces, chemical and biological weapons, and mini-submarines.[88] Reportedly, the DPRK has one of the world's largest stocks of chemical weapons. In addition to destabilizing security in the region and further isolating the DPRK, the drive to be a nuclear state has had profound consequences on resource allocation in the DPRK particularly as parts of the population were already reported to be food insecure for some time.[89]

138. The DPRK leadership's decision to develop a nuclear programme in addition to other *Songun* policies had serious economic and political consequences. Although the 1990s marked an improvement in relations between the DPRK and the United States,[90] the DPRK's first nuclear crisis occurred in May 1994 when the DPRK unloaded fuel rods from the Yongbyon reactor and withdrew from the International Atomic Energy Agency, ejecting its inspectors. This crisis risked derailing progress on the amelioration of relations with the United States. Through negotiations brokered by former United States President Jimmy Carter, the 1994 US-DPRK Agreed Framework provided Kim Jong-il with non-aggression assurances from President Bill Clinton as well as other concessions.

139. The DPRK had always been heavily dependent on assistance from the Soviet Union and China, including for agricultural inputs. Throughout the 1970s and 1980s, the DPRK also accumulated substantial debt to the Soviet Union and China which it was unwilling or

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nuclear weapons. In 1977, the DPRK yielded to pressure and agreed to International Atomic Energy Agency (IAEA) inspections of its research reactor developed with the Soviet Union but did not allow access to a second reactor. In 1985, at the behest of the Soviet Union, the DPRK ratified the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), although it refused the safeguard agreement which it did not sign until 1992. Nevertheless, the United States detected nuclear testing in 1985. In 1992, the DPRK and the ROK agreed to the Joint Declaration for a Non-Nuclear Korean Peninsula. However, in 1993 the DPRK failed to implement an agreement with the IAEA for inspection of the DPRK's nuclear facilities and threatened to withdraw from the NPT. Tensions escalated with the United Nations urging the DPRK to cooperate with the IAEA. In 1994, the DPRK triggered the first nuclear crisis by unloading fuel rods from the Yongbyon reactor, withdrawing from the IAEA, and ejecting inspectors. This ultimately resulted in the United States-DPRK Agreed Framework negotiated by former United States President Jimmy Carter. The United States administration under President Bill Clinton provided non-aggression assurances, promised normalization and two light water reactors for a nuclear freeze, reciprocal moves with a timetable including the halt to construction of a 50 megawatt and a 200 megawatt reactor. This first episode appears to have set the pattern whereby the DPRK precipitates a crisis and then negotiates favourable terms for the resolution of the crisis.

[88] Asymmetrical forces are those that are more difficult to counter and address perceived weaknesses in the other side. See Joseph S. Bermudez, Jr, Washington Public Hearing, 31 October 2013, afternoon (00:10:00).

[89] For details on the DPRK's obligations to ensure the right to food in the context of defence funding and the development of nuclear weapons, see section IV.D.4.

[90] In September 1991, the United States supported the DPRK's bid to join the United Nations. The United States also withdrew all land and sea tactical nuclear weapons from around the world, including the Korean peninsula. In January 1992, the United States ended its Team Spirit military training exercises that had incensed the DPRK. Later that month, Under-Secretary of State for Political Affairs Arnold Kanter met with the Korean Workers' Party Secretary for International Affairs Kim Yong-sun to discuss improving relations.

unable to pay. By the mid-1990s, the collapse of the Soviet Union coincided with the end of Chinese patience with its neighbour.

140. After Mao Zedong's death in 1976, Deng Xiaoping instigated unprecedented reform in China, bringing hundreds of millions out of poverty. China also built ties with Japan as part of this process. In 1989, the Sino-Soviet split came to an end. China normalized relations with the ROK in 1992, which unsettled the DPRK. The death of Kim Il-sung in 1994 contributed to strains in the relations between the DPRK and China. In fact, one of the proximate causes of the 1990s famine was the change in trade levels with China. After the DPRK's bilateral trade with the Soviet Union dropped more than ten-fold from $2.56 billion 1990 to $1.4 million in 1994, the DPRK became dependent on China for assistance.[91] However, the DPRK's bilateral trade with China fell from US$900 million in 1993 to $550 million in 1995, while food exports fell by half between 1993 and 1994.[92] The seasonal arrival of extreme rains in July and August 1995 compounded by soil erosion and river silting led to flooding that destroyed the harvest and contributed to the period of starvation that has been deemed the great famine and referred to as the "Arduous March" by the DPRK. Between 1996 and 1999, it is estimated that between 450,000 and 2 million people starved to death.[93]

141. One of the unintended consequences of the human-made famine was the widespread emergence of informal markets. It is estimated that informal economic activities reached 78 per cent of total income for North Korean households a decade after the famine.[94] As the Public Distribution System was no longer able to provide even minimal amounts of food, the authorities were unable to exercise the level of control they had once been able to. The breakdown of social control led to fissures in the blockade on information from outside the country. At the same time, control on the freedom of movement was loosened as large numbers of people attempted to escape from the DPRK and others sought to obtain supplies from China to trade. As many more North Koreans travelled back and forth to China, they were seeing for themselves the relative prosperity of China and received information about the ROK which was vastly different from the official propaganda of the government. The leadership made numerous efforts to rein in the markets and constrain the freedom of movement. These measures met with various levels of resistance.[95]

142. In the ROK, two politically liberal presidents—Kim Dae-jung elected in 1997 and Roh Moo-hyun elected in 2002—who had strong human rights credentials, pursued policies of engagement without conditions in a bid to improve relations. Their goal was to gradually move towards reunification rather than to engender sudden regime collapse in the DPRK or violent confrontation. President Kim Dae-jung's "Sunshine Policy" culminated in a historic summit with Kim Jong-il in Pyongyang in 2000. President Roh Moo-hyun essentially continued the Sunshine Policy under the "Peace and Prosperity Policy". The Sunshine Policy is estimated to have provided USD 3 billion in aid from the ROK to the DPRK. The ROK also engaged in joint projects to provide opportunities to the DPRK to earn foreign

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[91] Andrei Lankov notes the difficulty in realizing the actual level of support from the Soviet Union and China as much of their aid was provided indirectly through subsidized trade: Andrei Lankov, *The Real North Korea: Life and Politics in the Failed Utopian State* (Oxford, Oxford University Press, 2013), pp. 73-76.

[92] Victor Cha, *The Impossible State*, p. 327.

[93] See section IV.D.

[94] Andrei Lankov, *The Real North Korea*, pp. 82-90.

[95] See section IV.D.

exchange and to provide channels to the international market. The Kaesong Industrial Complex was the key cooperation project.[96]

143. In 2002, Kim Jong-il attempted to undertake economic reforms. The "7.1 Measures" (named for the date 1 July 2002 when they were announced) included the increasing of consumer prices to more accurately reflect market prices, increasing official wages, changing policies on management of state enterprises to allow more independence, and the formal establishment of general markets. While these events were unfolding domestically, Kim Jong-il was continuing to seek international assistance to compensate for the country's economic shortfall on terms that were not easy for humanitarian agencies to accept.[97] Normalization talks between Japan and the DPRK had begun in 1990s. They culminated in a summit between Japanese Prime Minister Junichiro Koizumi and Chairperson Kim Jong-Il of the DPRK National Defence Commission in September 2002.

144. The second nuclear crisis occurred in late 2002. During a visit to Pyongyang, United States Assistant Secretary of State James Kelly announced evidence of a secret uranium-enriching programme carried out in violation of the 1994 Agreed Framework, which he said DPRK authorities had acknowledged. The DPRK subsequently removed seals and surveillance equipment from the Yongbyon reactor, shipped 1,000 fuel rods to the reactor, expelled two International Atomic Energy Agency nuclear inspectors from the country, and announced its intention to reopen a reprocessing plant that could start producing weapons grade plutonium within months. In 2003, United States President George W. Bush ended bilateral discussions with the DPRK. Instead, the Six Party Talks[98] was determined to be the appropriate forum for further negotiations.

145. In the meantime, Kim Jong-il's 2002 economic reform initiative appears to have met with backlash from the military, and ultimately he retreated. In 2005, the DPRK attempted to revive the Public Distribution System and confiscated grain from farmers. At the same time, the government made it more difficult to cross the border into China. Nevertheless, by 2006, the ban on trading in rice and corn was effectively ended.[99]

146. In July 2006, the DPRK launched several long-range missiles. This led to the imposition of sanctions by various countries and a resolution by the United Nations Security Council condemning the multiple launches and calling on the DPRK to suspend all ballistic missile related activity.[100] Months later, the DPRK announced its first nuclear test. China issued strong statements criticizing the DPRK for its actions and supported for the first time a Security Council resolution imposing sanctions on the DPRK to prevent nuclear and ballistics weapons development.[101] Nevertheless, the criticism was quickly toned down as China has remained generally supportive of the leadership in the DPRK.

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[96] The temporary closure of the Kaesong Industrial Complex in early 2013 demonstrated the difficulties for the DPRK in engaging in the international economy. After the DPRK shuttered the operation for several months in a political stand-off, the complex reopened in September 2013. ROK-based companies suffered serious financial damage and face an uncertain future.

[97] See section IV.D.

[98] The Six Party Talks are aimed at ending the DPRK's nuclear programme through negotiations involving China, the United States, the DPRK, the ROK, Japan, and Russia. After several rounds of negotiations, the September 2005 agreement was reached whereby the DPRK agreed to abandon its pursuit of nuclear weapons. In 2009, the DPRK abruptly ended its participation in the Six-Party Talks. Discussions to re-start the talks continue.

[99] See section IV.D.

[100] S/RES/1695 (2006).

[101] Acting under Chapter VII of the United Nations Charter, but barring automatic military enforcement of its demands under the Charter's article 41, the Council unanimously adopted resolution 1718 (2006), which prevents a range of goods from entering or leaving the Democratic People's Republic

147. The 2007 election of President Lee Myung-bak in the ROK reversed the Sunshine Policy approach and focused on reciprocity and denuclearization. Unhappy with the change in tone, the DPRK made personalized attacks against him[102] and escalated military tensions. Since 2007, there have not been any ministerial level talks between the ROK and the DPRK. In 2008, Kim Jong-il suffered a stroke. In 2009, the DPRK's leadership attempted to gain control over its citizens and the process of marketization by implementing a drastic currency reform. Although the DPRK had previously attempted currency reforms in 1959, 1979 and 1992, the 2009 currency reform failed by causing widespread dismay and disruption by triggering massive inflation and temporarily halting the markets. The so-called reform introduced new notes with a devaluation of the currency but the salaries of state employees was effectively raised resulting in massive inflation. Many citizens had their savings disappear through the exchange limitation and the subsequent drastic rise in prices.[103]

148. In 2009, the DPRK conducted missile tests, withdrew from the Six Party Talks, ejected all international monitors from the Yongbyon facility where it reprocessed 8,000 fuel rods and conducted its second nuclear test. The Security Council passed Resolution 1874 tightening sanctions.[104] The DPRK accused the United States and the ROK of declaring war, leading to its announcement that the DPRK was no longer bound by the 1953 Armistice Agreement.

149. Following his stroke, Kim Jong-il began to focus more explicitly on the issue of his succession. Until 2001, his first-born son, Kim Jong-nam, had been presumed to be heir-apparent when with several family members he attempted to enter Japan on fake Dominican passports. In early 2009, the official propaganda organs started mentioning the "New Star General". Formal evidence of the selection of Kim Jong-un as Kim Jong-il's heir apparent only emerged in 2010. In March 2010, the ROK's naval corvette Cheonan was attacked and sunk by an underwater torpedo, killing 46 sailors.[105] In September 2010, during the Workers' Party of Korea's first convention since the 1980 Party Congress, Kim Jong-il's sister Kim Kyong-hui and Kim Jong-un were promoted to four-star generals although neither had served in the military. At the same time, Kim Jong-un was appointed the Vice-Chairman of the Central Military Commission. In November 2010, the DPRK shelled Yeonpyeong Island killing four ROK citizens. On 19 December 2011, the government announced that Kim Jong-il had died two days earlier. Dynastic succession promptly moved to the third generation of Kim Il-sung's family. It appears that this transition

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of Korea and imposes an asset freeze and travel ban on persons related to the nuclear-weapon programme. Through its decision, the Council prohibited the provision of large-scale arms, nuclear technology and related training to the Democratic People's Republic of Korea, as well as luxury goods, calling upon all States to take cooperative action, including through inspection of cargo, in accordance with their respective national laws.

[102] For example, in 2012, the Korean Central News Agency captioned a cartoon of President Lee Myung-bak: "The dirty hairy body of rat-like Myung-bak is being stabbed with bayonets. One is right in his neck and the heart has already burst open. Blood is flowing out of its filthy bottom hole." Available from http://www.bbc.co.uk/news/world-asia-22038370.

[103] For more detail on the 2009 currency reform, see section IV.D .

[104] Between 2006 and 2013, the United Nations Security Council passed five resolutions on the DPRK imposing sanctions and counter-proliferation measures against missiles: resolutions 1695 (2006), 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013).

[105] A joint investigation by the ROK, United States, United Kingdom, Sweden and Australia took six months and found that the Cheonan was attacked by an underwater torpedo manufactured by the DPRK. China did not accept the results and blocked the UN Security Council resolution condemning the DPRK for the attack.

occurred without any formal democratic process or effective engagement with the people of the DPRK.

150. Kim Jong-un is believed to have been born on 8 January 1983 or 1984. He was thus under 30 years of age at the time he succeeded to the highest political, executive and military power in the DPRK as the Supreme Leader. He has been endeavouring to consolidate his authority. In the weeks after Kim Jong-il's death in 2011, Kim Jong-un was given the title of "Supreme Commander" of the major military organizations. Official statements from various state organs referred to him as the nation's "sole national leader".

151. In early 2012, the DPRK announced it would suspend nuclear tests and allow international inspectors to monitor the moratorium in exchange for food aid from the United States. In April 2012, however, the DPRK launched an advanced missile, the Unha-3, which failed. The United States still cancelled planned food aid.

152. In the same month, Kim Jong-un consolidated his power by taking on the posts of the First Secretary of the Workers' Party of Korea and the Chairman of the Central Military's Commission, as well as First Chairman of the National Defence Commission.[106] He filled with his own appointees the top jobs at the Ministry of People's Armed Forces, the General Political Bureau and General Staff of the Korean People's Army. He further consolidated his hold over the military in July 2012 by retiring the head of the army, promoting a previously little known general in his place, and assuming for the first time the rank of marshal.

153. In December 2012, the DPRK launched a rocket putting its first satellite into orbit. Many analysts argued this was a cover to develop intercontinental ballistic missiles. The Security Council condemned the launch as a violation of resolutions barring testing of technology used for ballistic missiles, and adopted tightened sanctions against the country. The DPRK conducted its third nuclear test in February 2013 and seeks recognition as a nuclear state from the international community.[107]

154. After assuming supreme power in the DPRK, Kim Jong-un expressed his desire to revive the country's economy. On 31 March 2013, Kim Jong-un announced the "Dual Policy of Economic Construction and Nuclear Arsenal Expansion" which seemed to add improving the economy to the priority of the development of the DPRK's nuclear arsenal. He subsequently continued to add the slogan of "improving the lives of our people" to his public statements. In November 2013, the plan to establish 14 special economic zones to attract more foreign investment was announced.

155. The Commission has met with credible international sources who have remarked on increased signs of prosperity in Pyongyang in the past couple of years. They cite the increased use of mobile phones in the DPRK (albeit without international access), believed

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[106] In a tradition set by his father, Kim Jong-il retains his former titles of Secretary-General of the Workers' Party of Korea and Chairman of the National Defence Commission after his death.

[107] On 12 February 2013, the Spokesperson of the Ministry of Foreign Affairs of the DPRK addressed the President of the Security Council: "The DPRK's nuclear test is a just step for self-defence and is not contradictory to any international law. The U.S. has long put the DPRK on the list for pre-emptive nuclear strikes. It is a quite natural, just measure for self-defence to react to the ever increasing nuclear threat of the U.S. with nuclear deterrence. The DPRK withdrew from the Treaty on the Non-Proliferation of Nuclear Weapons after going through legitimate procedures and chose the way of having access to nuclear deterrence for self-defence to protect the supreme interests of the country. There have been on the Earth more than 2,000 nuclear tests and at least 9,000 satellite launches in the history of the United Nations, spanning over 60 years, but there has never been a Security Council resolution on banning any nuclear test or satellite launch" (S/2013/91).

to number up to 2 million subscribers,[108] as well as the prevalence of new vehicles on the formerly quiet streets. They marvel at the opening of new restaurants which appear to be well-frequented. Some observers have been noting what could be modernizing trends in the DPRK from Kim Jong-un appearing publicly with his wife in contrast to his father and grandfather, the brief appearance of an unlicensed Mickey Mouse dancing with an unlicensed Winnie the Pooh at a state-sponsored musical performance, and the commercial launching of the country's own home-grown tablet computer. Kim Jong-un himself has also been promoting sports in the DPRK by making public appearances at various athletic events.

156. At the same time, there has been a clampdown on the country's borders since Kim Jong-un's succession to power. The number of North Koreans who have reached the ROK fell significantly in 2012 and 2013.[109] The Commission has received reports of the use of blackmail and coercion against those who have left the country, including threats to family members in the DPRK to entice them to return to the DPRK. Certainly, a number of Koreans who have returned to the DRPK from the ROK have appeared on state television to express their apparent remorse for leaving and voicing criticism of life in the South.[110] Other control measures that have been reported include Kim Jong-un placing new limits on privately-funded education abroad by elite families.[111]

157. The sudden execution of Jang Song-thaek, Kim Jong-un's uncle, in December 2013, appears to be part of Kim Jong-un's consolidation process. Jang Song-thaek had been considered the "control tower"[112], due to his role as a guide to the new leader, and was widely considered to be second-in-command within the DPRK power structure. He was the husband of the sister of Kim Jong-il and daughter of Kim Il-sung. Her condition was uncertain at the time this report was finished.

F. External dynamics and the human rights situation

158. While an examination of the foregoing internal dynamics provides one explanation for the evolution of the DPRK and its human rights situation, it is also useful to examine the external environment to understand the particular influences that have shaped the character of the state. The end of World War II brought to the forefront aspirations of many colonized peoples for national independence, including the Koreans. At the same time, the new world order gave rise to rivalry between the United States and its allies and the Soviet

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[108] According to 38 North, US-Korea Institute at SAIS, Johns Hopkins University, the 3G service, Koryolink, launched in December 2008 by CHEO Technology JV Company, a joint venture between the Egyptian telecommunications firm Orascom and the government-owned Korea Post and Telecommunications Corporation, reached one million subscribers by February 2012. That rate was then doubled in 15 months, reaching an ostensible two million subscribers in May 2013. As 2011, Koryolink's network had 453 base stations covering Pyongyang, 14 main cities and 86 smaller cities. See Kim Yon-ho, "A Closer Look at the 'Explosion of Cell Phone Subscribers' in North Korea", 26 November 2013.

[109] See section IV.C.

[110] Alastair Gale, "North Korea Clamps Down on Defections", *Wall Street Journal*, 27 August 2013.

[111] According to an expert interviewed by the Commission, one of the perks enjoyed by the elite in the DPRK has been the education of children abroad. This privilege has expanded beyond the small number of selected cadres to those business people who are able to pay for this access. As the number of North Korean children abroad has increased, this situation has become more complex leading to concerns about control. ECC002.

[112] Ken E. Gause, "North Korean Leadership Dynamics and Decision-making under Kim Jong-un: A First Year Assessment", CNA Strategic Studies, September 2013.

Union and its allies. The Cold War has played an important role in the international relations that have impacted the DPRK. Equally important have been regional dynamics.

159. China has repeatedly expressed the desire for denuclearization of the peninsula,[113] and stability in the DPRK appears to be the main priority for China. Nevertheless, the majority of North Koreans who have sought to flee the DPRK have done so by crossing the border into China and transiting overland to reach South East Asia.[114] This has raised questions regarding China's treatment of these North Koreans and its adherence to international human rights law,[115] while human rights violations in the DPRK have directly impacted China.

160. The Japan-DPRK Pyongyang Declaration following the 2002 summit noted that "establishing a fruitful political, economic and cultural relationship between Japan and the DPRK through the settlement of unfortunate past between them and the outstanding issues of concern would be consistent with the fundamental interests of both sides, and would greatly contribute to the peace and stability of the region."[116] The process was derailed by the failure of the DPRK to follow up on its admission of the abduction of Japanese nationals.[117] The abductions issue continues to resound forcefully with the Japanese public, as do the security threats from nuclear weapons and ballistic missiles that the DPRK has tested and continues to develop.

161. Both the ROK and the DPRK have stated that unification of the peninsula is a goal. Under the ROK's National Security Law, anyone who knowingly supports or encourages "anti-state" entities faces up to seven years' imprisonment. Unauthorized trips to the DPRK also remain forbidden. In recent years, the ROK has increased efforts to assist DPRK citizens who have fled the DPRK. The DPRK has countered that citizens of the DPRK who have escaped or are attempting to flee have been trafficked. Since 2007, there have not been any ministerial level talks between the ROK and the DPRK. President Park Geun-hye announced a new framework in the ROK's approach to relations with the DPRK, using the term "Trustpolitik" to refer to an incremental trust-building process that would both provide a tough position as well as flexibility for negotiating when there are openings.[118] Cabinet-level talks that were scheduled for 12 June 2013 in Seoul were aborted after the two sides failed to agree on the composition of the delegations. Beyond the aborted ministerial level

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[113] On 24 May 2013, President Xi Jinping in his meeting with Choe Ryong-hae, the director of the General Political Bureau of the Korean People's Army and a member of the Presidium of the Political Bureau of the Workers' Party of Korea Central Committee who was the special envoy of Kim Jong-un, said, "China has a very clear position concerning the issue that all the parties involved should stick to the objective of denuclearization, safeguard the peace and stability on the peninsula, and resolve disputes through dialogue and consultation.", *Xinhua News Agency*. On 27 June 2013, President Xi Jinping re-affirmed this position during the summit with ROK President Park Geun-hye in Beijing in a joint statement issued at the end of their meeting.

[114] Many of the witnesses who testified at the Commission's public hearings as well as confidential interviews confirmed this route. The Korean Bar Association's *2012 White Paper on Human Rights in North Korea* noted that the usual escape route is via China and Thailand, p. 533.

[115] See section IV.C.

[116] See Pyongyang Declaration at http://www.mofa.go.jp/region/asia-paci/n_korea/pmv0209/pyongyang.html.

[117] The DPRK repeatedly raises historical grievances such as the issues of conscription into the Japanese military operations and the existence of "comfort stations" during World War II. Japan maintains that it is necessary to comprehensively resolve outstanding issues of concern, such as the abduction issue and other security matters, in order to normalise the Japan-DPRK relationship.

talks, the new administration's experience in negotiating with the DPRK has yielded mixed results. While the Kaesong Industrial Complex was reopened in September 2013 after marathon rounds of talks, family reunions organized for the national *Chosuk* (Harvest Festival) holiday were abruptly cancelled by the DPRK, after having raised the hopes of long separated and mostly elderly family members on different sides of the Korean border. Following Kim Jong-un's 2014 New Year's address urging the ROK to "put an end to slander and calumny that brings no good to either side" and his offer to "join hands with anyone who opts to promote inter-Korean relations…regardless of his or her past", President Park proposed resumption of temporary family reunions for the Lunar New Year. The proposal was rejected by the DPRK.

162. The Commission recalls that the Korean War has not been concluded. In 2013, 85 year-old United States citizen Merrill Newman, a veteran who fought in the Korean War, was arrested and detained for over one month in the DPRK. This event again highlights the sensitivities over the Korean War that remain in the DPRK. Resolution of this conflict may need to be part of any process that integrates the DPRK into the international community as a responsible nation-state that respects the human rights of its own people. Likewise, the DPRK has continued to express discontent over the colonial occupation. These matters similarly require attention as part of that process. Pursuing gradual progress on these matters should not detract from the Democratic People's Republic of Korea's obligations under international law that it must immediately implement.

IV. Findings of the commission

A. Violations of the freedoms of thought, expression and religion

163. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right to freedom of thought, conscience and religion. The Commission considered this provision along with article 20 of the ICCPR when assessing the allegations of human rights violations regarding the indoctrination of the DPRK people by the state. It is noted that article 14 of the Convention of the Rights of the Child (CRC) further provides the same right to freedom of thought, conscience and religion specifically for children.

164. When looking at the extent the DPRK people are able to freely express their opinions, access information and join associations, the Commission is guided by articles 19 and 22 of the ICCPR as well as articles 12, 13, 15 and 17 of the CRC.

1. Indoctrination, propaganda and the related role of mass organizations

165. The population of the DPRK is indoctrinated from a young age in accordance with the single state ideology and the Ten Principles as sustained by the Supreme Leader and the Workers' Party of Korea to such a degree that it not only infringes on the freedom to seek and receive information as article 19 of the ICCPR and article 17 of the CRC envisage, but it also supresses the emergence and development of free thought and conscience, which is protected by article 18 of the ICCPR and article 14 of the CRC. The Human Rights Committee has commented that the latter right is far-reaching and profound, and encompasses freedom of thought on all matters. The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in times of public emergency.[119]

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[119] General Comment No. 22, para. 1 (CCPR/C/21/Rev.1/Add.4).

(a) Indoctrination from childhood

166. Children are taught to revere and idolize Kim Il-sung, Kim Jong-il, and now Kim Jong-un. Plaques with slogans, posters and drawings expressing gratitude to the Supreme Leader are found in kindergartens irrespective of the children's ability to fully comprehend these messages.[120] In addition to the usual subjects in schools, such as mathematics, science, art and music, an unusually large portion of the school syllabus is dedicated to the instruction about achievements and teachings of Kim Il-sung and Kim Jong-il, including the Ten Principles and the DPRK's official version of its revolutionary history.[121] One former educator in the DPRK suggests that the teachings of ideology based on the writings of and about Kim Il-sung and Kim Jong-il in fact "constitutes most of the education" in the DPRK.[122] The contents of these teachings are customized to suit the students' capacity to understand and then memorize them.[123] If the students do not perform well on the subjects of Kim Il-sung's philosophy and revolutionary history, they may be punished even if they do extremely well in other subjects.[124] These educational goals are contrary to those outlined in article 29 of the CRC.

167. There are two basic themes central to the North Korean indoctrination programme. One is to instil utmost loyalty and commitment towards the Supreme Leader. The other is to instil hostility and deep hatred towards Japan, the United States of America (USA), and the Republic of Korea (ROK). The latter objective is pursued with such deliberate and systematic efforts that it clearly amounts to advocacy of national hatred constituting incitement to discrimination, hostility and violence, and to propaganda for war, in violation of article 20 of the ICCPR.[125]

168. Children are taught that they should aspire only to emulate Kim Il-sung. For example, those inclined to drawing are encouraged only to draw pictures of the Supreme Leader or make drawings which might have pleased Kim Il-sung. Good drawings are put up in schools. Typically, they either depict the Kim family or they depict children stabbing Japanese or American soldiers with swords or pencils.[126]

- One witness stated that as a school student, drawing anything other than images to please Kim Il-sung never occurred to him. He was interested in becoming a great

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[120] TAP002, TAP005.

[121] TAP005, TAP006.

[122] Park Kwang-il, "Seoul Summit: Promoting Human Rights in North Korea – Human Rights concerning Education: North Korean Authoritarian Regime's Infringement on Human Rights Starts from Education", 2005. Official subjects apparently include "Dear Leader Kim Il-sung's childhood days," "Dear Leader Kim Jong-il's Childhood days", "Dear Leader Kim Il-sung's Revolution Activities", and "Dear Leader Kim Jong-il's Revolution Activities", p. 120.

[123] TAP006, TLC035.

[124] TLC035.

[125] Article 20 indicates that such propaganda and advocacy should be prohibited by law, which entails not only the adoption of necessary legislative measures against such acts, but also that the State effectively prohibits them and also itself refrains from any such propaganda or advocacy, Human Rights Committee General Comments No. 11, paras. 1-2 (HRI/GEN/1/Rev.9 (Vol. I)).

[126] TAP005. From among the pictures taken in the DPRK by an Associated Press photographer, one of the pictures featured was described as "Kindergarten kids' drawings that depict children killing U.S. soldiers hang on the wall at Kaeson Kindergarten in central Pyongyang on 9 March 2013. For North Koreans, the systematic indoctrination of anti-Americanism starts as early as kindergarten". Available from http://www.nationalgeographic.com/125/photos/north-korea-guttenfelder/?utm_source=NatGeocom&utm_medium=Email&utm_content=pom_20131103&utm_campaign=Content#.UpdduNKkpaB.

> warrior, to become a killer of the enemies, going to the Republic of Korea and dying for the sake of Kim Il-sung and Kim Jong-il.[127]

169. Children are encouraged to be willing to risk their lives for the values of Kim Il-sung and Kim Jong-il, more so than for their own parents.[128] Children are surrounded by patriotic images and slogans projecting Kim Il-sung as a fatherly figure, protecting the nation and providing for its citizens.[129] Such messaging and indoctrination serves not only to create loyalty to the leader from a young age, but effectively works to fracture familial ties as children are expected to display greater respect and commitment towards the Supreme Leader than their own parents.

170. All school subjects are taught in a manner compatible with state ideology. For example, one witness described that, when reference was made to a chemical gas in chemistry lessons, a comparison had to be made between how the two Korean governments would use the gas.[130] According to this rhetoric, while the DPRK aimed at industrial development, ROK would use it for tear gas against protestors discontented with the conditions of their lives. In a 1981 speech, Kim Il-sung had reminded that:

> It is important in class education to intensify anti-imperialist education, education against US imperialism and Japanese militarism. They are sworn enemies of the Korean people and the target that must be attacked in the Korean revolution. We must intensify anti-imperialist, anti-US and anti-Japanese education among Party members and the working people so that they fight indomitably against US imperialism and Japanese militarism. We must also educate people to harbour bitter hatred for the landlords, comprador capitalists, and reactionary bureaucrats the anti-popular fascist ruling system of South Korea and to have the spirit to fight them without compromise.[131]

171. Article 29 of the CRC outlines the goals of education for children. Disproportionate time allocation to allow worship of the Kim family in school is contrary to these goals. Most alarming are the teachings of hate, violence and racism in direct contravention of sub-articles (1)(c) and (d) of article 29.

(b) The Mass Games and other compulsory mass propaganda events

172. Children and university students in the DPRK are regularly required to participate in parades, mass rallies and other choreographed performances which serve a political purpose. The largest of these performances is the annual mass gymnastics, today generally referred to as the Mass Games.

173. The Games feature approximately 100,000 children and young adults in a minutely choreographed display of gymnastics, dance, acrobatics, and dramatic performance. In a lengthy talk delivered to the producers of the Mass Games, Kim Jong-il in 1987 explained that the Mass Games not only aim at fostering a particularly healthy and strong physique in

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[127] TAP005.

[128] TSH019.

[129] TAP005, TLC022.

[130] TLC031.

[131] Kim Jong-il, "On Further Improving Party Ideological Work: Concluding Speech at the National Meeting of Party Propagandists", 8 March 1981. (Pyongyang, Foreign Languages Publishing House, 1989). Available from http://www.korea-dpr.com/lib/215.pdf.

participants, but also a high degree of organization, discipline and collectivism in schoolchildren.[132] He went on:

> The schoolchildren, conscious that a single slip in their action may spoil their mass gymnastic performance, make every effort to subordinate all their thoughts and actions to the collective. … Since mass gymnastics are creative works … [t]he creative workers must present in great depth and breadth throughout their mass gymnastic productions the leader's greatness, the sagacity of his leadership, his immortal revolutionary achievements and his noble communist virtues. Their works must also show in full the greatness and brilliant achievements of the Party that effects historic changes …

174. The Mass Games have become a major source of foreign currency revenue for the DPRK. They attract large numbers of tourists, who are often unaware of the human rights violations endured by participating children, who are compelled to participate (unless their physical appearance does not meet the state-determined ideal). Training will often last an entire year, including 4-6 months during which the participants train all day at the expense of their schooling. Training practice is gruelling. Children who do not perfect their performances are subjected to physical punishment and additional evening training.

- A former university sports teacher informed the Commission that he was required to train students for the Mass Games. He said students were forced to train 6-12 hours a day in very harsh conditions. Although most participants were school children and university students, some army personnel also participated. Anyone with any sort of disability was excluded. The witness recalled that many children fainted from fatigue during training. Many also suffered severe injuries.[133]
- In testimony before the Commission's Tokyo Public Hearing, Ms L described how she missed an entire semester of university education because her class was required to practise for 6 months, 10 hours a day, for a short segment of a parade, to be held in the Kim Il-sung Stadium of Pyongyang in the presence of Kim Jong-il. Training was so intense that some participants fainted from exhaustion. Fainting was especially common during summer when students trained in the hot sun, on concrete floor. Practice emphasized perfection. Anyone who made repeated mistakes was made to remain on the training ground until midnight as a punishment. Ms L recalls that her teachers would invoke the example of a boy of 7 or 8 years of age who had practised through the intense pain of an acute appendicitis. He eventually died because he did not receive timely medical care. The dead child was treated as a hero because he had dedicated his entire life for an event in the presence of Kim Jong-il.[134]

175. The strict training routine for the Mass Games over such a long period and in such conditions is dangerous to the children's health and well-being. The Commission finds such exploitation of children to be in contravention of articles 31 and 32 of the CRC providing for a child's right to rest and leisure and to be protected from work that interferes with the child's education or is harmful to the child's health.

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[132] Kim Jong-il, "On Further Developing Mass Gymnastics: Talk to Mass Gymnastics Producers", 11 April 1987. (Pyongyang, Foreign Languages Publishing House, 2006), also available from http://www.anightinpyongyang.com/pdf/02.05.01.pdf.

[133] TSH009.

[134] Tokyo Public Hearing, 29 August 2013, afternoon (with additional details provided by the witness in a confidential interview).

(c) Confession and criticism sessions

176. Children in the DPRK are introduced at an early age to "confession and criticism" sessions. Children gather in groups weekly and take turns standing up and describing their activities for the previous week, as far as possible showing how they were living in accordance with the teachings of the Kim philosophy and the Ten Principles. The Principles are recited during the confession. Children must berate themselves if they have failed in some way during the preceding week; such as being absent from class or not having made a contribution as expected. They must then make a commitment to become better. They are also expected to describe the failings of at least one of their peers in the same group. Until they identify someone for criticism, they are not allowed to stand down.

177. Weekly "confession and criticism" sessions constitute a method for the state to monitor any perceived foibles in its citizens.[135] These weekly sessions are carried out throughout the lives of the DPRK citizens. They take place in prison and labour training camps. They are also undertaken for those mobilized to carry out public construction works.

178. Notably, sub-principle 4.5 of the Ten Principles calls for all to.

> Participate without absence in more than 2 hours of study groups, lectures and collective studies devoted to revolutionary ideas of Great Leader Comrade Kim Il-sung, ensure discipline for these studies and make these studies a habitual part of daily life, at the same time struggling with any contradictions or neglect towards ensuring such studies are always completed.[136]

179. It was reported in August 2013 that the Ten Principles were revised, for the first time in 39 years, to add Kim Jong-il's name to that of Kim Il-sung to be honoured with loyalty by the people. It was further reported a month later that the DPRK authorities had "ordered a nationwide round of public criticism sessions and associated writings to determine whether [the revised Ten Principles] are being upheld".[137]

180. In the aftermath of the execution of Kim Jong-un's uncle, Jang Song-thaek, in December 2013, the number of indoctrination sessions across the country appears to have been increased, with the population expected to pledge their loyalty in writing and to reflect upon their own behaviour. The execution of Mr Jang had reportedly caused a considerable amount of bafflement and fear among the DPRK population.[138] However, there was no room for criticism of the process, its lack of transparency, its unseemly haste, and its violent ending. Only expressions designed to further the interests of the Supreme Leader and the dictates of the leadership are tolerated.

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[135] TAP006, TAP007, TAP008, TAP012, TAP015, TLC005, TLC035, TSH052.

[136] As translated by Citizens' Alliance for North Korean Human Rights.

[137] "NK Adds Kim Jong Il to 'Ten Principles'", *Daily NK*, 9 August 2013. Available from http://www.dailynk.com/english/read.php?cataId=nk01500&num=10828; "Sessions Ordered to Check on Ten Principles", *Daily NK*, 24 September 2013. Available from http://www.dailynk.com/english/read.php?cataId=nk01500&num=10998.

[138] "Execution prompts surprise, fear inside North Korea", *BBC News*, 16 December 2013. Available from http://www.bbc.co.uk/news/world-asia-25399143.

(d) Compulsory membership in mass organizations

181. Article 22 of the ICCPR, article 15 of the CRC, and the DPRK Constitution provide for the right to freedom of association.[139]

182. The DPRK has claimed that if anyone wishes to form a democratic social organization, an application should be sent to the Cabinet thirty days in advance, specifying the purpose of the organization, the number of its members, its organizational structure, date of inauguration, and the name of the leader, accompanied by a copy of the proposed statute.[140] There are reportedly associations such as the Unified Culture and Arts League, the Democratic Attorneys' Association, the Anti-Nuclear Peace Committee and the Africa-Asia Coalition Committee. However, all of these bodies appear to also be under the oversight of the Workers' Party of Korea.[141] In practice, not a single officially registered political party or civil society organization appears to exist that is not effectively under the control of the state and of the Workers' Party of Korea.

183. All citizens are required to become members of and participate in the activities of mass associations that are under the oversight of the Workers' Party of Korea.[142] Membership starts on entry to elementary school.[143] All children aged between 7 and 13 are made members of the Children's Union. Their activities are overseen by officials of the Kim Il-sung Socialist Youth League, which is made up of DPRK citizens aged between 14 and 30.[144] After the age of 30, a citizen becomes a member of the General Federation of Korean Trade Unions, Democratic Women's Union or the Union of Agricultural Working People depending on one's employment and marital status.[145] Although the on-going socio-economic changes make Party membership less attractive than in the past, most citizens would still aspire to become a member of the Workers' Party of Korea. This is, however, a privilege granted only to about 15 per cent of the population. Party members also become officials of the mass associations controlled by the Party.[146] It is compulsory to be a member of one of these associations until one's death.[147] One witness remarked that even those who were forcibly repatriated would resume membership upon release from detention.[148]

184. Membership of these associations serves several basic functions. One is to organize and monitor the daily activities of the people whether at work or outside of work. Another is to ensure continued indoctrination through regular classes on teachings of the Kim philosophy as well as sharing of information on current and foreign affairs.[149]

- A former official for the Kim Il-sung Socialist Youth League spoke of four categories of basic duties to be discharged by members of the Youth League. First and foremost is the duty to "worship the Kim family". Second is the duty to "arm the people" with revolutionary ideas. Third is the duty to "secure the nation" through the monitoring and assessment of loyalty. Fourth is the duty to "build the socialist economy" by mobilizing select groups of people to carry out construction and related works.[150]

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[139] Article 67 provides that (1) Citizens are guaranteed freedom of speech, the press, assembly, demonstration and association; and (2) The State guarantees the conditions for the free activities of democratic political parties and social organizations.

[140] UPR DPRK national report, A/HRC/WG.6/6/PRK/1, para. 44.

[141] KINU, *White Paper on Human Rights in North Korea* (2013), p. 296.

[142] TAP007, TSH052.

[143] TAP006.

[144] TAP015.

[145] TAP005, TAP006, TAP007.

[146] TAP007.

[147] TAP007; KINU, *White Paper on Human Rights in North Korea* (2013), pp. 296-297; International Coalition to Stop Crimes against Humanity in North Korea (ICNK), "Introduction to North Korea", pp. 18-19.

[148] TAP007.

[149] TAP006, TAP007, TSH019.

- Once a member of the Children's Union, one witness spoke of striving to be a model student, and to be exemplary in her studies and in extra-curricular activities. She and other students were also expected to contribute towards their school by donating materials such as used paper and used vinyl paper.[151]
- Another witness spoke of the Children's Union members being engaged in certain activities such as chanting slogans of the Workers' Party of Korea and beating drums on the street to secure public attention. They would also be asked to carry out activities aimed at generating income for the state as well as to chant slogans during election periods.[152]
- One witness who was one of the officials for the Women's Democratic Union explained that they are responsible for, among others, ensuring that lectures are administered for its members on *Juche* and revolutionary history, as well as on internal politics and foreign affairs. Members are also assigned to attain goods which may be sold to earn foreign currency. For example, in one year members are expected to deliver one gram of gold, two adult hares' skin and two dogs' skin. These would be collected and sent to the central level of the Party.[153]

185. A major activity undertaken by the Youth League is to mobilize its members and administer "volunteer" labour units to carry out public construction works. It is expected that ordinary DPRK citizens, aged from 17 years old onwards, would be mobilized and enlisted into groups to work on various construction projects building roads or public structures. At the level of a county, only a group of 1,000 would be required; 20,000 at the provincial level and as many as 100,000 people would be necessary for projects in a large city such as Pyongyang.[154] Those selected to perform these duties reportedly consider it an honour to serve in this way. Such participation is viewed as one of the stepping stones to improving one's chances of becoming a member of the Workers' Party of Korea or being accepted for further study.

186. Refusing participation in these activities does not appear to be an option as doing so would reduce one's prospects for social and political mobility and leave a black mark on one's dossier.[155] In addition to a registration system where all DPRK citizens are issued an identity card which they keep in their possession, there is another record system maintained by the Government with respect to each individual which has direct impact on one's ability to succeed and advance in society, and which the individual has no right to access.[156]

(e) Ubiquity of propaganda

187. Citizens in the DPRK are constantly exposed to ubiquitous state propaganda. The Propaganda and Agitation Department within the Central Committee of the Workers' Party

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[150] TAP006.

[151] TAP015.

[152] TLC035.

[153] TAP007.

[154] TAP006, TAP009.

[155] TAP008, TAP009.

[156] This is explained further in section IV.B.

of Korea is primarily responsible for generating propaganda directives.[157] In a speech to "Party Propagandists" in 1981, Kim Jong-il stated, "… solid foundations for propaganda and agitation work have been laid under the single guidance of the Party Central Committee." Kim Jong-Il provided guidance on how to intensify ideological education as well as propaganda and agitation for the construction of the socialist economy. He spoke of "verbal agitation", "agitation by artists", effective use of visual aids and officials setting personal examples as different forms of agitation that are powerful and influential.[158]

188. The propaganda units in local administrations, schools, places of work and at various other levels are responsible for reproducing messages determined at the centre. They also put up propaganda materials under the directive of the Central Committee's Propaganda Department. In every province for example, there is an art centre responsible for drawing the portraits of the Supreme Leaders and portraying their accomplishments which are displayed in exhibitions, and hung in the hallways and on the walls of public departments and companies.[159] Mansudae Art Studio in Pyongyang is reportedly the central level body responsible for producing propaganda paintings, murals, posters, billboards, and monuments revering the Kim family. It has been suggested that it is the largest art factory in the world, employing roughly 4,000 DPRK nationals, including some 1,000 artists.[160]

189. Exceptionally good drawings by children are put up not only in their own schools but also other schools. There are also designated artists in universities and in the military who draw such propaganda materials for posters and billboards to be put in university halls and premises, and for drawings in textbooks and other publications for teachings in the military academy.[161]

190. Pictures of the Supreme Leaders and monuments dedicated to them are omnipresent. The Korean Central News Agency (KCNA) reported in April 2013 that, "44.8 per cent of the total state budgetary expenditure [for the previous year] for the economic development and improvement of people's living standard was used for funding the building of edifices to be presented to the 100th anniversary of the birth of President Kim Il-sung, the consolidation of the material and technological foundation of *Juche*-based, modern and self-supporting economy and the work for face-lifting the country."[162] Another report, citing sources in the DPRK, estimates that the equivalent of USD200 million has been spent on 3,200 eternal life towers, about 400 mosaic murals and 23-metre high Kim Il-sung and Kim Jong-il statues.[163]

191. In each and every household in the DPRK, there must be at least three framed pictures on display, i.e. one of Kim Il-sung, one of Kim Jong-il and one of the two of them appearing to be in discussion. Kim Jong-un's picture has not yet been ordered to be displayed. This may be in keeping with the example set by Kim Jong-il. He did not add his

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[157] TAP009.

[158] Kim Jong Il, "On Further Improving Party Ideological Work: Concluding Speech at the National Meeting of Party Propagandists".

[159] TAP002.

[160] "Mansudae Art Studio, North Korea's Colossal Monument Factory", *Business Week*, 6 June 2013. Available from http://www.businessweek.com/articles/2013-06-06/mansudae-art-studio-north-koreas-colossal-monument-factory.

[161] TAP005.

[162] Korean Central News Agency (KCNA) is the state-run agency of the Democratic People's Republic of Korea as stated on its website "Review of Fulfillment of State Budget for Last Year and State Budget for This Year", *KCNA*, 1 April 2013. Available from http://www.kcna.co.jp/item/2013/201304/news01/20130401-20ee.html.

[163] "N. Korea spent 530 million dollars in idolization propaganda", *Dong-A Ilbo*, 28 November 2013. Available from http://english.donga.com/srv/service.php3?bicode=050000&biid=2013112843348.

own image until the end of the traditional mourning period of three years following his father's death. It has been widely reported how every DPRK citizen must wear a badge or lapel pin with Kim Il-sung's portrait as a sign of loyalty.[164] Everyone is also expected to bow to these portraits and to always make sure that they are kept in pristine condition.[165]

192. As the following accounts illustrate, any damage to or destruction of the images of the leaders is considered a political crime subject to the harshest of punishments.

- One witness described how his father had unintentionally soiled an image of Kim Jong-il printed in a used newspaper which he had used to mop up spilt drink and was consequently sent to a political prison camp (*kwanliso*). The rest of the family was spared this fate, but was rendered as a family with hostile *songbun* and thus suffered decades of harsh official discrimination.[166]
- According to one witness, a staff member of a hospital in North Hamgyong Province was investigated by the State Security Department (SSD) for one month after accidently breaking the glass on a portrait of Kim Il-sung whilst carrying out the mandatory weekly cleaning of it.[167]

193. In July 2012, KCNA published the supposed testimony of a man who was allegedly involved on behalf of the ROK and the USA in what the authorities described as "terrorist activities" designed to destroy Kim family statues and monuments. The article implied that the man would be executed.[168] Other sources verified that he was indeed executed for his alleged actions.[169]

194. Propaganda permeates every aspect of the lives of citizens of the DPRK. Apart from the state-controlled media, they are also exposed to inescapable propaganda broadcasts in their homes and in public spaces. A foreigner who had visited DPRK recounted to the Commission how she was struck by the pervasiveness of loudspeaker systems broadcasting state propaganda in public.[170] In addition to the controlled television and radio broadcasting (see below), DPRK nationals receive information from the state through "fixed line" broadcasting. The fixed line system operates through the use of speakers in every DPRK household. These speakers are inspected regularly by officials to ensure they are still functioning. These fixed lines are often used for broadcasting "forbidden" news and information (i.e. news that the outside world is not supposed to know) and also for emergency situations. Information that is transmitted through the fixed lines includes conditions of factories and farmlands, and how each collective farming effort has performed in output and production. Details regarding criminals, the crimes they have committed and the punishments imposed are also transmitted through the fixed lines. The

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[164] See for example: "The day Kim Il-sung died his first death", *Asia Times*, 25 September 2013. Available from http://www.atimes.com/atimes/Korea/KOR-01-250913.html; Barbara Demick, *Nothing to Envy: Ordinary Lives in North Korea* (New York, Spiegel & Grau, 2009), p. 46.

[165] TAP009; In May 2007, there were apparently instructions issued by the Organization Bureau of the Central Party on "Overall Inspections on How to Carry out Respect for the Portraits of Great Leader and Beloved General", KINU, *White Paper on Human Rights in North Korea* (2013), p. 282.

[166] TBG005.

[167] TSH051.

[168] See http://www.kcna.co.jp/item/2012/201207/news19/20120719-08ee.html.

[169] TLC004 noting, however, that real reason for the arrest and execution of the man had been his involvement in the politically sensitive smuggling of cameras and radios into the country. See also section IV.E.

[170] Submission to the Commission: Confidential source.

names of criminals are released along with their places of residence so that others are alerted and also deterred from committing the same crime.[171]

- Ms Jeong Jin-hwa worked as a newspaper reader for the radio system on the trains. While some private transport services have recently emerged, rail remains the main mode of public transport for long distances in the DPRK. As such, it provides an excellent opportunity for indoctrination. As a reader on these trains, Ms Jeong was given specific instructions from Pyongyang on which specific articles from the *Rodong Sinmun* (the official newspaper of the Workers' Party of Korea) she had to read. In addition, to reading these articles live over the train radio system, she was also sent cassette tapes (later compact discs) containing news and other pre-recorded items from the Party Propaganda Department in Pyongyang to be played on the train radio system. [172]

  She stated: *"And it seems that the Workers' Party papers that I read now are the same as the papers I read 20 years ago. On the first page and on the second page they deal with political issues about what's happening with the Kim family, that's dealt with in section 1 and section 2. Section 3 and section 4 of the paper talk about the development, about the economies and about some of the issues related to residents of North Korea. And section 5 and section 6 deal with other countries, such as South Korea and the United States. And so what's dealt with in the paper, that is the newspaper, is the same right now as it was 20 years ago."*[173]

195. Readers are specifically trained at the Office of Speaking Guidance in the Workers' Party of Korea on how to read the articles. There is a manual on how to speak and enunciate. For example, when saying the name of the Great Leader or the Dear Leader, there is a special slow and high pitch that had to be used to convey admiration and endearment. On the other hand, when speaking about the Americans or the South Koreans, a pitch that is grating is used. The words are chewed in order to convey hostility and hatred. On every train, there was a political agent whose job was to not only monitor the passengers but also the train crew including the radio news readers. A reader could get into trouble for mispronouncing or stumbling over the names of the Great or the Dear Leader. When the electricity current on the train got too low, the tape recording would become distorted. On these occasions, the reader had to quickly take out the cassette to prevent the names of the Leaders from being broadcast in a distorted and therefore unacceptable way.

196. The people of the DPRK are taught from young to revere the Kim family and to internalize the state ideology as their own thoughts and conscience. The Commission finds that throughout the lives of the DPRK citizens, whether at work or outside of it, the activities of citizens are regulated and closely monitored by the state. The individual has no option but to participate in state-directed associations and activities; as otherwise, one's record would be tainted and opportunity for upward mobility would be impeded.

2. Control of information through tightly controlled State media and prohibition of any external information, including non-political information

197. Summing up the impressions that numerous persons who fled the DPRK conveyed to the Commission, one witness emphatically stated :

> *"You are brainwashed … don't know the life outside. You are brainwashed from the time you know how to talk, about 4 years of age, from nursery*

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[171] TAP009.

[172] Seoul Public Hearing, 22 August 2013, afternoon (with additional details provided by the witness in a confidential interview).

[173] Seoul Public Hearing, 22 August 2013, afternoon (00:10:48).

> *school, brainwashing through education, this happens everywhere in life, society, even at home ... North Korea is not open to the outside world, is a fenced world. So nothing should come through that fence. Even listening to the radio, this is restricted to certain channels. They want the people to be blind, deaf to the outside world, so that the people won't know what is happening.*"[174]

(a) Control of television and radio

198. There are four television channels that are broadcast in the DPRK. One channel is for the "ordinary people", i.e. outside Pyongyang, called Chosun Central Television. Another channel is only for Pyongyang residents called Education and Cultural Broadcasting. A third channel, Kaesong Television, is broadcast to the ROK. On weekends, there is a fourth channel for foreigners called Mansudae Television. Foreigners in Pyongyang can watch the other channels in the Korean language whereas Mansudae Television broadcasts programmes in their original language with subtitles in Korean. There are programmes in Chinese and Russian. People in Pyongsong, Nampo, and other regions close to Pyongyang can also watch those channels meant for Pyongyang residents such as Education and Cultural Broadcasting and Mansudae Television.[175]

199. In addition to direct propaganda programming, there may be other programmes with songs and dramas. Their underlying message, however, remains about being loyal to the state. Even a romance between a man and a woman typically includes their pledging allegiance to the government.[176] Cinema is also directed, under the instructions of Kim Il-sung and Kim Jong-il, to "play a mobilizing role in each stage of the revolutionary struggle."[177]

200. When people buy television sets in the DPRK, they have to register the television with a government authority, the Transmission Surveillance Bureau of the SSD, referred to as Department or Bureau 27. This bureau is responsible for modifying the equipment so that it is able to receive only the approved channel(s) and to block off television channels broadcast from the ROK, China and Russia. The DPRK also deploys sophisticated jamming equipment to block foreign television broadcasts.[178] However, such jamming efforts face limitations considering they are energy-intensive while the DPRK commonly suffers from energy shortages.

201. Due to the different capabilities of radio wave frequencies and the changing radio signals depending on atmospheric conditions and solar activity, it is much harder to control radio transmissions. For example, the radio channel used to listen to "Chosun Central Broadcasting" (a state-approved channel) in the summer switches to an ROK radio channel called "One-Nation Broadcasting" in the winter. For this reason, the state does not normally permit ordinary DPRK residents to own radios. Radios inside cars and automobiles are removed before ordinary DPRK citizens can acquire a vehicle. DPRK citizens are allowed to own cassette recorders. These are usually foreign produced and come equipped with a radio; the "Communication Maintenance Bureau" and Ministry of People's Security (MPS) is responsible for removing the radio components of the cassette recorder before it can be

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[174] TAP003.

[175] TAP009.

[176] Ms Jeong Jin-hwa, Seoul Public Hearing, 22 August 2013, afternoon.

[177] A quotation by Kim Il-sung in Kim Jong-il, "The Cinema and Directing" (Pyongyang, Foreign Languages Publishing House, 1987). Available from http://www.korea-dpr.com/lib/209.pdf.

[178] TAP009.

used by ordinary citizens. Free-dial radios are confined to specific organizations, or are used by the military for purposes of emergency situations.[179]

202. DPRK citizens with some technical knowledge are able to listen to the radio, including foreign broadcasts, while avoiding detection. A skilled technician can substitute the missing components in a recorder such that a nail can be used externally to complete the circuit to allow someone listening to the radio using earphones to appear as if he or she was simply listening to the recorder. Short wave radio broadcasts produced by stations located in or set up by the ROK are also easily accessible with appropriate equipment.[180] Several of these Seoul-based radio stations, some funded by the USA, are run by former DPRK nationals and provide listeners with not only news from outside the DPRK but also news regarding the DPRK and the government's activities not normally broadcast internally.[181]

203. As portable free-tuning radios from China are inexpensive and can easily be concealed, DPRK citizens are also reported to secretly purchase and smuggle these into the country, despite the obvious risks of being caught with one.[182] Kim Jong-il reportedly issued an order in 1999 to the SSD that anyone found to have a small mobile radio should be treated as a spy. Department 27 officials carry out surprise inspection visits to private households in order to investigate whether people have manipulated their state-approved radios/recorders and televisions or secretly acquired equipment, smuggled in from China, in order to receive foreign broadcasts. If anyone is detected with forbidden equipment, their television set or radio is confiscated and they are sent for ideology re-education. If they are officials, they are liable to lose their positions.[183]

- One witness, who worked as an inspector checking televisions and radios in North Hamgyong Province near the Chinese border, described how he had to check the equipment in an area inhabited by privileged officials. He remembered once catching a mother who allowed her small children to watch the cartoon "Tom and Jerry" on Chinese television. The mother pleaded with him not to report her, and, in exchange for a bribe, he did not.[184]

(b) Control of print media and the Internet, and other means of communication

204. In 2009, the DPRK informed the Human Rights Council that there are 480 newspapers published and circulated in the DPRK at national and provincial levels, factories, enterprises and universities. It was also claimed that there "were hundreds of kinds of magazines published by scores of publishing houses."[185]

205. A witness who worked in the state media apparatus in the DPRK told the Commission that all of these newspapers, despite their different titles and reporters, have essentially the same content. All media content, including television, newspapers and radio, is controlled by the Publication and Broadcasting Department which operates within the Propaganda Department of the Workers' Party of Korea.

206. There is no editorial freedom in the DPRK: all stories published at all levels are pre-determined and centrally controlled. The Publication and Broadcasting Department issues a

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[179] TAP009, TJH008.

[180] TAP009.

[181] Reporters Without Borders, "North Korea: Frontiers of Censorship – Investigation Report", October 2011, pp. 4, 8.

[182] Intermedia, "A Quiet Opening: North Koreans in a Changing Media Environment", May 2012, p. 21. Available from http://www.intermedia.org/a-quiet-opening-in-north-korea/.

[183] TAP009, TJH008.

[184] TJH008.

[185] A/HRC/WG.6/6/PRK/1, para. 42.

"monthly plan for publication and report" to the Central Party and each regional newspaper agency, broadcasting bodies, and magazine publishing houses. All publication, broadcasting and magazine publishing entities formulate their work plan based on this monthly plan.[186] For example, if the government were to order that more grass eating animals are to be reared, all media content down to the regional levels would relate to this topic.[187]

207. All content prepared by journalists goes through several layers of review. While editing does occur, the layers of review relate more to censorship; ensuring that content is in line with the directive and state ideology.[188] Journalists are liable to be admonished for seemingly minor mistakes in not adhering to the Publication and Broadcasting Department directive or the state ideology.[189]

- Mr Jang Hae-sung provided testimony at the Seoul Public Hearing of the Commission saying that he made a typographical error and misspelled Kim Il-sung's name in a report. He was sent to a training camp for six months as punishment for this transgression.[190]

208. Local journalists are not ordinarily allowed to go abroad on reporting assignments. A very small number of journalists at the central level would be permitted to go overseas on assignment, usually to China or Russia. Foreign correspondents in the DPRK, initially mainly coming from China, Russia and Cuba, are apparently only allowed to write stories complimentary of the DPRK. They are also not allowed to speak to the general population.[191] It has been often reported that the DPRK permits foreign media only for occasional visits, usually for important ceremonial events. In those situations, the foreign journalists are subject to restricted movement and must be accompanied by officials at all times.

209. There has been some recent liberalization of restrictions on foreign journalists operating within the DPRK though the system is still far from free. Associated Press (AP) opened a western news bureau in January 2012. It claimed at the time that its Pyongyang bureau, which is based inside the official Korean Central News Agency, would operate under the same standards and practices as AP bureaux worldwide.[192] A foreign correspondent (who is part of a small team of AP journalists who are allowed to visit the DPRK on a regular basis) spoke of having a minder accompanying him at all times during field visits. Attempting to evade the minder was not possible as the journalist would have had their visa revoked in response. Requests to view certain events or locations not already planned by the authorities are usually declined. Official permission is also required for ordinary citizens to meet foreigners. Members of the public who are introduced by the minders to foreign journalists typically have only positive things to say about the situation in the country.[193]

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[186] TAP009; Mr Jang Hae-sung, Seoul Public Hearing, 22 August 2013, afternoon.

[187] TAP009.

[188] Note sub-principle 4.7 of the Ten Principles which states, "Use considerately the guidelines of the Leader when preparing reports, discussions, lectures or printed materials and eliminate any words or writing that is contrary to his instructions."

[189] TAP009; Mr Jang Hae-sung, Seoul Public Hearing, 22 August 2013, afternoon.

[190] Seoul Public Hearing, 22 August 2013, afternoon.

[191] TAP009.

[192] "Associated Press opens news bureau in North Korea", *The Guardian*, 16 January 2012. Available from http://www.theguardian.com/world/2012/jan/16/associated-press-bureau-north-korea.

[193] "Now You See It", *National Geographic*, October 2013. Available from http://ngm.nationalgeographic.com/2013/10/north-korea/sullivan-text.

- One witness spoke of having to memorize a script which was incomprehensible to her and other employees of a public facility which was expected to receive foreign officials inspecting the facility. As the Party secretary was expected to accompany the inspectors, everyone was fearful and practised the given script repeatedly so as not to make a mistake.[194]

- Another witness described having a friend who worked in the Propaganda department. His friend told him that when there were inter-Korean or other international meetings, the department would provide a script to be followed by participating DPRK officials. If someone diverted from the script, the meeting would be halted and that person would be reproached.[195]

210. The Commission learned that while it is possible for an individual to have a telephone installed in the DPRK, it is restricted and extremely expensive. Wiretapping of such telephones was also found to be "enforced in an effort to cut off and control the flow of information."[196] It was reported in mid-2013 that the only 3G mobile provider in the DPRK is now nearing 2 million subscribers (close to ten per cent of the population). Mobile phone usage was apparently rare before the North Korean mobile phone service, 'Koryolink', was launched in 2008. The service is now available in all major cities and along main roads and rail routes across the country. While the service includes voice calls and SMS, the government does not allow its citizens to make international calls or connect to the Internet. Foreigners and tourists visiting the country are allowed to use the Internet and international communication, but are barred from contacting most domestic telephone lines.[197] Koryolink also reportedly sells a Chinese-made mobile phone with only basic functions.[198]

211. While around 2 million citizens are said have access to computers, they only have access to an intranet system that contains information filtered and determined by the government. Internet access is restricted to a limited few such as universities or some members of the elite.[199] Computers must be registered with the authorities including those for official organizational use and home computers are not connected to the intranet system.[200]

212. Reportedly, following the execution in December 2013 of Kim Jong-un's uncle, Jang Song-thaek, about 35,000 articles from the KCNA website and a further 20,000 items from the *Rodong Sinmun* website were removed.[201] This appears to be part of the wider

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[194] TSH051.

[195] TSH052.

[196] KINU, *White Paper on Human Rights in North Korea* (2011), pp. 275-277.

[197] Orascom Telecom Holding (OTH) subsidiary Koryolink is operated through Cheo Technology, a joint venture between OTH and the North Korean Ministry of Posts and Telecommunications. OTH owns 75 per cent of the operation, with the DPRK government owning the rest. Koryolink launched its 3G coverage in Pyongyang in December 2008 with an initial 5,300 subscribers. "Orascom Telecom North Korean mobile subsidiary nears 2 million subscribers", *Daily News Egypt*, 1 May 2013. Available from http://www.dailynewsegypt.com/2013/05/01/orascom-telecom-north-korean-mobile-subsidiary-nears-2-million-subscribers/.

[198] "North Korean Traders Scramble for Smartphones From South", *Radio Free Asia*, 15 November 2013. Available from http://www.rfa.org/english/news/korea/smartphones-11142013185158.html.

[199] TAP009; National Human Rights Commission of Korea, Seoul Public Hearing, 22 August 2013, afternoon; KBA, *2012 White Paper on Human Rights in North Korea* , p. 313 footnote 13.

[200] Intermedia, "A Quiet Opening: North Koreans in a Changing Media Environment", pp. 57, 72.

[201] "In 1984 moment, N. Korea deletes near entirety of news archives", *NK News*, 16 December 2013. Available from http://www.nknews.org/2013/12/in-1984-moment-n-korea-deletes-near-entirity-of-news-archives/.

efforts to purge Mr Jang from the DPRK's (political) history and is reflective of how the state controls and manipulates information to support its official position.

213. Department 27 is also believed to be responsible for monitoring email transmissions, and the use of mobile phones and satellite phones including those of foreigners.[202] Surveillance apparatus in the DPRK is increasingly sophisticated, and the areas monitored are increasingly expanding beyond the border areas. Information received by the Commission indicates that the SSD employs a large number of hackers who interfere with websites critical of the regime.[203]

- Mr Kim Joo-il, who fled the DPRK and now runs a website with political news and human rights information about the DPRK, testified before the Commission that his page was attacked on so many occasions that his service provider had informed him that it was no longer willing to host the webpage.[204]

(c) Crackdown on foreign movies and mobile telephones

214. All CDs and DVDs used in the DPRK must have a stamp to show they are government approved. Over the last few years with the growth of informal markets, movies and recorded television programmes from the Republic of Korea are increasingly being smuggled into the DPRK for use on CD/DVD players and mini disk drives. Local officials, sometimes including SSD agents, or persons connected to these officials, are often involved in secretly selling and distributing ROK films. A 2012 study on the changing media environment in the DPRK found that half of its sample reported having watched a foreign DVD.[205]

215. Many witnesses spoke about crackdowns and inspections searching for ROK soap operas and films on DVDs, CDs and USB sticks. They recounted personally being caught and punished for watching ROK content, or knowing people who were subject to such treatment.[206] The minimum punishment for those found to have watched South Korean films or with South Korean films in their possession was a period in a labour re-education centre.[207]

216. Articles 194 and 195 of the DPRK's 2009 Criminal Code provide for the punishment of reform through labour for any period less than five years, depending on the gravity of the offence, with respect to the "conduct of decadent acts" such as "watching or listening to music, dance, drawings, photos, books, video-recordings or electronic media that reflects decadent, carnal or foul contents" as well as "listening to hostile broadcasting and collect[ing], keeping and distribut[ing] enemy propaganda".[208]

- Ms L testified that she regularly watched ROK movies on a hard disk or CD, but she was very scared of being caught. Some of the vendors were shot to death. She was asked by the municipality to go to one of the executions, but did not do so. The authorities could not force her, because she was out of school and they could not easily locate her. In her home province, there was a special security force that was assigned to crack down on the viewing of South Korean movies. They conducted door to door searches and checked people's CD players. On some occasions, they waited for the electricity power to come on and then deliberately cut it, so that people could not take out the CD from the player. On one occasion, a friend threw his CD player out of the window, so as not to get caught. Around 2006, one of her sister's friends, a 31 year old woman and her brother were caught watching South Korean movies and were tortured. She was detained for one month, during which she was deprived of sleep and beaten. She had to write a long apology for days on end. Shortly after her release, Ms L saw the woman and noticed how thin she was. She also heard that the woman's brother was beaten so badly that he could not walk for a while.[209]

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[202] TBG031. TLC041 referred to Bureau 14 being responsible for monitoring telephone waves.

[203] See also "North Korea's 'World Class' Cyber Attacks Coming from China", *VOA News*, 21 November 2013. Officials in the ROK were reported to have said that recent cyber attacks traced to Pyongyang have demonstrated hacking capabilities that are world class, and that there are seven North Korean hacking organizations and a network of spies operating in China and Japan. Available from http://www.voanews.com/content/north-koreas-world-class-cyber-attacks-coming-from-china/1795349.html.

[204] London Public Hearing, 23 October 2013, session 4.

[205] Intermedia, "A Quiet Opening: North Koreans in a Changing Media Environment", p. 8.

[206] TAP001, TAP002, TAP008, TAP015, TJH017, TJH028, TSH019, TSH052.

[207] TAP002; Intermedia, "A Quiet Opening: North Koreans in a Changing Media Environment", p. 71.

[208] 2009 Criminal Code of the DPRK as translated by Citizens' Alliance for North Korean Human Rights.

- A former SSD official, who served in a border province, indicated that the SSD would be responsible for monitoring illegal importation of "capitalist" goods such as soap operas from the ROK and pornographic material. Those implicated in such crimes would be shot to death or sent to an ordinary prison camp (*kyohwaso*) for 10-15 years depending on the severity of the crime and level of involvement.[210]
- One witness informed the Commission that, in 2008, a relative of hers had watched CD-roms from China and then gave the CD-roms to his friends. He was arrested by the local authorities and "tried" publically, and eventually executed in Hoeryong.[211]

217. The Commission was informed by several witnesses that orders were apparently handed down directly by the Supreme Leader to crack down on foreign movies. Group 109, an inter-agency surveillance group named after the date of its establishment on 9 October 2003 by Kim Jong-il, is mentioned as being responsible for specifically cracking down on these items.[212] Group 109 also gathered people in a stadium, more than twice a month, as spectators to those who had been caught and would be sent to an ordinary prison camp (*kyohwaso*) as a warning for the rest.[213] According to one former SSD agent, Group 109 was made permanent in 2009 and with more specialized agents.[214]

- According to one witness, there was a very large crackdown under the order of Kim Jong-il on items illegally imported from the ROK and other prohibited goods into the DPRK towards the end of 2004. A central inspection group was reportedly established, comprising representatives from the Central Committee of the Workers' Party of Korea, the prosecutor's office, the judiciary, SSD intelligence, the police, the Youth League, Women's Union, and Workers' Organization. The central inspection group had full authority to undertake inspections, arrests and imprisonment. It had the objective of "clearing" the areas near the border including Musan, Hoeryong, and Onsong in North Hamgyong Province, and in Ryanggang Province. Examples of prohibited items included illegal books (such as books not printed in the DPRK, and religious and other DPRK books published without Government approval) and illegal recordings (such as CD-roms, video tapes, and memory cards) from foreign countries. Illegal activities involving trafficking in persons and smuggling, as well as any activities related to defecting from the DPRK, also fell under the purview of this central inspection group. During this crackdown, the witness, who had been involved in smuggling CDs and tapes from China, was arrested and sent to *Kyohwaso* Jeongori Camp No. 12 where he was detained for six years.[215]

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[209] Tokyo Public Hearing, 29 August 2013, afternoon (with additional details provided by the witness in a confidential interview).

[210] TJH015.

[211] TBG028.

[212] TAP002, TAP008, TBG031.

[213] TAP008.

[214] TLC041.

218. The crackdown on foreign movies has been reinforced again from 2010 when Kim Jong-un became the designated successor and started assuming control. Orders were reportedly handed down from the Supreme Leader ordering the security agencies to form an inter-agency task force to crack down on the smuggling of movies and also on drug trafficking.[216] In January 2013, the MPS apparently issued a proclamation on behalf of the National Defence Commission that urged the population to report various types of behaviour to the security forces, including possessing "strange and decadent" goods such as recordings, videos, pictures and publications, which do not conform to the local custom, and watching and distributing foreign television shows. In October and November 2013, a string of public executions reportedly occurred targeting people mainly for watching and distributing foreign pornographic material and movies from the ROK.[217]

219. DVDs reportedly became available to DPRK nationals from early to mid-2000s and remain popular. More recently new media devices such as MP3 players and USB flash drives are increasingly being used to watch and listen to foreign content as well as to share information.[218] In November 2013, it was reported that the "North Korean authorities are focusing on Universal Serial Bus (USB) flash drives and Enhanced Versatile Disc (EVD) players they believe are the primary way the recordings are being smuggled into the country."[219]

220. People living along the border with China have also recently started using mobile phones of Chinese service providers to make unauthorized international telephone calls. Some offer this service to others for a fee. Although the use of illegal Chinese mobile phones and/or service providers is limited by geography and carries a high risk for those who are caught, it has been found to have a large impact on cross-border trade, efforts by separated family members in maintaining contact with each other including for purposes of arranging border crossings, and the flow of information into and out of the DPRK.[220] The authorities consider the unauthorized use of foreign mobile phones to be a political crime. Department 27 has deployed sophisticated monitoring equipment to pick up the emissions of Chinese mobile phones.[221] Those caught are subject to interrogation by the SSD, often under torture. Users are regularly subject to imprisonment in a labour training camp or sometimes an ordinary prison camp (*kyohwaso*).[222]

- In 2009, one witness, who was planning to flee the DPRK, was caught while calling from a mobile phone through a localization device employed by the SSD. He was stripped and searched. When the mobile phone was discovered, the agents accused him of espionage and beat him, before detaining him at the SSD Interrogation

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[215] TAP016.

[216] TJH004.

[217] See section IV.E.

[218] Intermedia, "A Quiet Opening: North Koreans in a Changing Media Environment", pp. 8, 16-19, 57-58.

[219] "Pyongyang cracks down on 'recordings' from outside", *The Korea Times*, 20 November 2013. Available from https://www.koreatimes.co.kr/www/news/nation/2013/11/116_146567.html.

[220] Intermedia, "A Quiet Opening: North Koreans in a Changing Media Environment", pp. 54-57.

[221] TJH008.

[222] See section IV.E.

Detention Centre in Hyesan, Ryanggang Province. In detention, the agents took turns beating him with a piece of wood. He lost his teeth in the lower jaw. The witness managed to escape and was later told by a contact in the SSD that he would have been executed if he had stayed.[223]

- Another witness recalled a man being arrested for the use of a Chinese mobile phone and involvement in smuggling activities in 2006. He was interrogated by the SSD and severely tortured, resulting in head injuries and fractured bones. The victim was released without further punishment following the payment of a substantial bribe.[224]

221. The Commission finds that the DPRK strictly controls the information and opinions that reach the population through media as a necessary precursor to indoctrinating the population. No local private media is allowed to exist in the DPRK. The state media is subject to central level direction and strict censorship to further the objectives of the state and the Party. The DPRK further cracks down systematically on any attempts or enterprise which might allow foreign influences into the country, whether through telecommunications or information technology.

3. Suppression of freedom of expression and opinion through surveillance and violence

222. Intensive state indoctrination occurs in an environment where the exercise of the right to express facts and opinions critical of the state or its official ideology is not tolerated. One submission received by the Commission highlighted that,

> [L]ack of freedom of expression does not only mean a prohibition of certain things. It rather means that everybody has to talk and behave in a certain manner. If, for example, a DPRK citizen who participates in a mass gathering fails to shout "*man se*" ("May he live 10,000 years!") and to applaud at the appearance of the "Dear respected Marshall" Kim Jong Un, he might be denounced and punished.[225]

223. Among the long list of offenses allegedly committed by Jang Song-thaek, uncle to Kim Jong-un, who was executed in December 2013, was "unwillingly standing up from his seat and half-heartedly clapping" when Kim Jong-un was elected vice-chair of the Central Military Commission of the Workers' Party of Korea and announced at the Party's Third Conference.[226]

224. A witness related to the Commission how he was discouraged since his youth by his parents from aspiring to become a writer as no one could write freely.[227] In the DPRK, one can only write about matters which put Kim Il-sung, Kim Jong-il and the Workers' Party of Korea in a good light. Writers who write beyond this remit were liable to be arrested and treated as political criminals.[228]

- At the Seoul Public Hearing, Mr Jang Hae-sung told the Commission: "*My friends, people who used to be writers … [w]e are never allowed to write our ideas, our thoughts … for example, this writer, he slipped when he was talking to someone else. He was drunk at the time, he slipped and he said that writers are never*

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[223] TBG004.

[224] TJH022, TJH023.

[225] Submission to the Commission: SUB060.

[226] "Traitor Jang Song Thaek Executed", *KCNA*, 13 December 2013. Available from http://www.kcna.co.jp/item/2013/201312/news13/20131213-05ee.html.

[227] TAP009.

[228] TAP009.

allowed to write their ideas and just by saying that, he was sent to Yodok, Camp No. 15..."[229]

- Ms Jeong Jin-hwa during the same session of the Seoul Public Hearing added: "*There are lots of people who were taken like that, especially in the media. If you are in the media in North Korea, if you slip, it becomes a political issue. And as Mr. Jang said, we saw a lot of people taken away to the kwanliso, the political camps. So some people, the general criminals go to the correctional camps, but these writers, the people in the media, if they slip just once, they can disappear overnight and their family can be gone overnight, and sometimes, the three generations are wiped [out]. So you see, some people are told that, people think that they deserve it because they turned their backs on the regime. This is what the people think.*"[230]
- One witness recalled memorizing children's songs such as "Revolutionary Army Game", as part of the nation's required music curriculum. Only classical music pieces composed before 1899 could be played, and works by the Russian composer Rachmaninoff for example were off limits because he had migrated to the USA. The purpose of music in the DPRK was to inspire adoration of the leader and the belief that socialism will triumph. Accordingly, only pieces that convey admiration for the Kim family and instil loyalty towards the nation and the Party are allowed. Popular music of the West and ROK is totally banned. A person responsible would be punished if caught for playing music of this genre.[231]

225. Witnesses interviewed by the Commission, while they did not understand the basis for the law, knew that expressing their opinion freely was not acceptable in the DPRK. When asked about why no one would protest against the harsh living conditions and strict rules the population in the DPRK was subjected to, witnesses indicated that such protest was unimaginable and no one would dare to protest. As explained by Mr Kim Jong-su, "*protest is equivalent to death*".[232]

226. In its submission to the Human Rights Committee, the DPRK highlighted that its citizens are guaranteed the right to freedom of opinion and expression under the Constitution and the Press Law. This right is not without qualification however; "such expression of one's thought is forbidden as encouraging others to attempt to overthrow, disrupt or undermine the state, disclosing state secrets to do serious harm to the state security and the healthy public order, insulting another or impairing his or her honour".[233]

227. In responding to a question posed by a member of the Committee on Economic, Cultural and Social Rights on how the Government reconciled the difference between individual rights and collective rights under the Covenant, one DPRK representative said,

> Individual and collective rights were intertwined: what was good for the individual was good for the group and vice-versa. Since individuals lived in society, there should be harmony between individual and collective needs. If an individual expressed an opinion that was contrary to that of the group, the opinion would be taken into consideration, but efforts would also be made to persuade the individual

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[229] Seoul Public Hearing, 22 August 2013, afternoon (01:02:20).

[230] Seoul Public Hearing, 22 August 2013, afternoon (01:03:28).

[231] TLC035.

[232] London Public Hearing, 23 October 2013, session 1 (01:29:45).

[233] CCPR/C/PRK/2000/2, paras. 117-118.

to bring his or her opinion into harmony with the collective opinion. Care was taken not to resort to oppression in such cases.[234]

228. The Commission recalls that the Human Rights Committee considers the right to hold opinions without interference to be one which the ICCPR permits no exception or restriction. "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1 … Any form of effort to coerce the holding or not holding of any opinion is prohibited".[235] The CRC also obliges states to respect every child's right to express their views freely,[236] and the right to seek and impart information and ideas of all kinds, either orally, in writing or print, through art or any other media.[237]

229. The population is in fact encouraged to denounce any conduct that may pose a threat to the political system and its leadership. The Commission received a document, reportedly issued by the Ministry of Public Safety in January 2013, which provides a list of 18 acts or "behaviours" that are to be reported to the security forces. This list includes: committing anti-state, anti-national crimes and promoting to commit them; meeting foreigners illegally and exchanging letters and goods; behaviours which corrupt public morals; and all other kinds of "abnormal behaviours".

(a) Monitoring and surveillance system

230. The state has established a vast surveillance apparatus to become aware of the expression of sentiments deemed anti-state or anti-revolutionary. This includes the setting up of a large network of secret informers, who operate in all areas of life. In addition to the monitoring carried out by the officials of the mass organizations, of which membership is compulsory for all citizens, there is also the Neighbourhood Watch.

231. The Neighbourhood Watch (*Inminban*) is made up of about 20-40 households with a leader appointed to report to the police or SSD on unusual activities in the neighbourhood including unregistered visitors and monitor for anti-state activities and expressions of dissent. Sometimes villagers are also given orders by security agents to spy on their neighbours.[238] The Neighbourhood Watch has been described to be responsible for registering residents, monitoring their activities, providing ideological education, and mobilizing people for various campaigns with leaders appointed by local party committees. The Neighbourhood Watch scrutinizes the intimate details of family life. It also has the authority to visit homes at any time, even at night, to determine if there were unregistered guests or adulterous activities, and to report these to security organs for action.[239]

232. The Commission learned that even casual remarks shared in a small circle could end up being reported by informants, leading to serious consequences.

- Mr Son Jung-hun was working in a trading company within the Central Committee when he visited the house of his chief for a small New Year gathering in January 1996. There he saw scenes from a video tape recording of Western military weaponry including fighter jets. He made the mistake of saying out loud that the technology was quite developed. His act of making this statement was reported, and he was called in for questioning. He was accused of praising capitalist nations and though he was not charged or arrested (due to his good *songbun* and general good behaviour), he was removed from his position.[240]

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[234] E/C.12/2003/SR.44, para. 46.

[235] CCPR/C/GC/34, paras. 9-10.

[236] See CRC, article 12

[237] See CRC, article 13.

[238] TAP002, TAP008.

[239] Ken E. Gause, "Coercion, Control, Surveillance, and Punishment", pp. 42-48.

233. The monitoring of the individual's actions to assess and determine their loyalty happens at various junctures in their life.

- Mr Kim Joo-il explained at the London Public Hearing, for example, how the Korean People's Army has a two-track system of official political monitoring whereby the commanding captain and a second political officer of a company monitor the soldiers' political loyalty and then report to the Korean People's Army (KPA) political department run by the Workers' Party of Korea. In addition, every platoon stationed close to the Demilitarized Zone also had an officer from the KPA's Military Security Command (the army's own secret police). Every morning, they would participate in an indoctrination session from 9 to 11 a.m.[241]
- One witness stated that in the DPRK, people with low *songbun* are required to monitor each other. Her father could not join the Party. He was nonetheless forced to work as a spy for the SSD, investigating the Japanese wife of his friend because the SSD wanted to learn more about letters that she was receiving. The witness also described the general fear most people live in. People cannot tell their families what they think or talk about attempting to escape the DPRK. An elderly woman in her neighbourhood was imprisoned in Camp No. 15 at Yodok for 10 years after her daughter-in-law told authorities of plans to escape involving her and her son. When the witness's family (her mother, father, sister, brother, husband and daughter) left the DPRK, they did not tell her uncle. After they left, they heard that he was interrogated and severely tortured. His injuries were so severe that he was unable to move for a long time after the torture.[242]

234. Witnesses also spoke of how their movements or the movements of their family members were monitored more closely because of their backgrounds.[243]

235. Having come from South Korea, Mr Lee Jae-geun, who provided information to the Commission in Seoul, felt that he was under close surveillance. He stated how there were seven levels of surveillance monitoring him, and that everyone was watching every single word he uttered, every single act he undertook. Anything that appeared suspicious was reported to the SSD.[244]

- One witness, whose parents were born in Japan and then "returned" to the DPRK, believed that their family was closely monitored because they were returnees. Her parents never talked about their former life in Japan. They advised her never to talk about Japan in her school. Party officials came to their home and questioned the family, particularly when they received mail from Japan.[245]
- A Japanese national, who had moved to the DPRK with her adoptive parents and later married a Korean who had also "returned" from Japan, recalled having to write

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[240] TAP011.

[241] London Public Hearing, 23 October 2013, session 4 (with additional details provided by the witness in a confidential interview).

[242] TSH051.

[243] TBG016.

[244] Seoul Public Hearing, 23 August 2013, morning.

[245] TJH026.

in all letters that they were living well thanks to Kim Il-sung, and that all letters they received appeared to have been opened before they received them.[246]

- One witness spoke of the 10th Chamber which falls under the Department of Organization Guidance under the Secretariat of the Party Central Committee that is responsible for monitoring and carrying out surveillance on those who interact and fraternize with relatives of the Kim family. It was necessary to submit a report to the 10th Chamber about all interactions with the Kim family. Passing the second son of the second wife of Kim Il-sung in the corridor and being acknowledged by him was sufficient interaction that a report was necessary. The witness also related how one official who had been running errands for a similar relative of Kim Il-sung while posted abroad was reportedly admonished and returned to the DPRK following a surveillance report from the 10th Chamber.[247]

236. In addition to crackdowns against foreign items such as DVDs described above, there are also central inspection groups set up to regularly carry out inspections targeting specific crimes and wrongdoings including on activities deemed to be anti-socialist, such as drug abuse, and dealing with homeless people and vagrants.[248] At a lower level, groups of citizens are also mobilized to crack down on what are referred to as morality violations. These are violations of decrees that are handed down from time to time like the prohibition against women wearing trousers or riding a bicycle.[249] One crackdown in 2009 on gambling in the parks of Pyongyang led to those caught being sent to an ordinary prison camp (*kyohwaso*) and their families exiled from Pyongyang.[250]

237. In the rare event that political criticism is publically voiced, this is considered a major event and is harshly punished.

- The Commission was informed by a witness of a young worker who had hung up a few dozen hand-printed posters in the city of Nampo that called for the overthrow of Kim Jong-il in June 2001. This was considered a major political incident and KPA Security Command, MPS and SSD formed a joint taskforce to investigate the case. Kim Jong-il was notified and he apparently personally issued orders to track down the suspects and persecute them severely. Over the course of 5 months, the security agencies took writing samples from every inhabitant above the age of 10. The man was caught after he confided about his conduct to a friend who was an informant. Despite intense torture, the man did not implicate any co-conspirators and the investigators concluded that he had acted alone. For political reasons, however, the security agencies spread rumours that the man had been corrupted by viewing foreign movies and pornography and eventually agreed to commit the crime as a spy acting on behalf of the USA. Based on a conviction by the Military Supreme Court, the man was executed by hanging. His immediate family and the entire city population were forced to watch. The wife of the victim was forced to immediately divorce him when he was arrested so as to avoid guilt by association. His mother and two sisters were sent to *Kwanliso* No. 15.[251]

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[246] TSH011.

[247] TAP013. See Ken E. Gause, "Coercion, Control, Surveillance, and Punishment", p. 60 where 'Bureau 10 targets' are discussed and appear to refer to those who are privy to the private lives of the Kim family and continue to be monitored as members of the exploiting class; Yun Tae-il, *The Inside Story of the State Security Department* (Seoul, Wolgan Chosun, 2002).

[248] Group 927 has been identified as the central inspection group dealing with the homeless and "vagrants". See section IV.D for more on this i.e. the "927 retention camps".

[249] TAP002; Ishimaru Jiro, ed., *Rimjin-gang: News from Inside North Korea* (Osaka, Asiapress Publishing, 2010), pp. 438-443; ICNK, "Introduction to North Korea", p. 19.

[250] TJH004.

238. There have been recent commentaries regarding DPRK citizens increasingly expressing openly their anger about the economic conditions. It was reported, for example, that when women under 50 were banned from trading in the open markets in North Hamgyong Province in early 2008, a protest staged by groups of women led to a relaxing of the ban. A wave of protests was said to have taken place during the DPRK's failed attempt at currency reform towards the end of 2009. People were seen burning old currency notes in public in protest. This was however followed by reports of around 50 executions taking place including of the officials supposedly responsible for the policy reform. In early 2011, when electricity was diverted from North Pyongan Province to light up Pyongyang in commemoration of Kim Jong-il's birthday, the people there had spontaneously protested, demanding both food and electricity.[252]

239. The Commission noted that these random protests are mostly about economic conditions rather than direct criticisms against the state. The two appear to be closely connected; and as information from the outside world comes through from China to the DPRK border areas and trickles inland, increasing numbers of DPRK citizens learn of different truths. With the recent execution of the supposed second most powerful person after the Supreme Leader, however, and purges of those associated with the former, the people are again warned of the state's apparently arbitrary power over life and death and its determination to stem anti-state or anti-revolutionary activities.

4. Denial of freedom of religion and of religious expression

240. Freedom of religion and religious expression are guaranteed in articles 18 and 19 of the ICCPR, as well as articles 13 and 14 of the CRC. Both treaties not only call for State Parties to recognize these rights, but also to protect associated rights to freedom of association and peaceful assembly.[253] Despite being a State Party to these treaties, the Commission finds that these protections are not afforded to DPRK citizens who are consequently unable to practise the religion of their choosing.

(a) Institutionalization of the personality cult

241. At the London Public Hearing, the Reverend Stuart Windsor provided testimony regarding the institutionalization of "the personality cult and requirement of unwavering obedience" such that "no political deviation is tolerated".[254] The reverence and idolatry of Kim Il-sung was compared to a religious belief, and several sub-principles of the Ten Principles were highlighted to contain elements indicating the religious nature of the state ideology.[255] In particular, Principle 4 of the Ten Principles states:

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[251] TJH015.

[252] "Can the 'Jasmine Revolution' Spread to N. Korea?", *The Chosun Ilbo*, 23 February 2011. Available from http://english.chosun.com/site/data/html_dir/2011/02/23/2011022301300.html; "N.Korean Protestors Demand Food and Electricity", *The Chosun Ilbo*, 23 February 2011. Available from http://english.chosun.com/site/data/html_dir/2011/02/23/2011022300383.html; Reporters Without Borders, "North Korea: Frontiers of Censorship – Investigation Report", p. 4.

[253] See ICCPR, article 21 and CRC, article 15.

[254] London Public Hearing, 23 October 2013, session 5 (with reference to written submission).

[255] Examples of such sub-principles (as translated by Citizens' Alliance for North Korean Human Rights) include:

> Accept the Great Leader Comrade Kim Il-sung's revolutionary thought as your belief and take the Great Leader's instructions as your creed. Accepting the Great Leader Comrade Kim Il-sung's thought as one's own belief and taking his instructions as one's creed is the most crucial element requested for one to become an endlessly loyal *Juche* communist warrior. It is also a precondition for the victory of our revolutionary struggle and its construction.

242. In Seoul, Mr A told the Commission that, *"[i]n North Korea, the only ideology, the only religion that is allowed is the ideology of Kim Il-sung"*.[256] The Commission finds that the intolerance and non-acceptance of any other belief system than that of the official state ideology effectively meant the intolerance and non-acceptance of the people's right to freedom of religion and the freedom to have or to adopt a religion or belief of one's choice.

- Mrs X at the Washington hearing stated: *"Well you can consider the entire North Korean society as some sort of religious group with the religious leader being Kim Il-sung and their Bible being the Juche or self-reliance ideology. So if there are any other religions be that Christianity or Catholicism or whatever, if there's any other religions that are somewhat in competition with that -- their main religion then it will be undermining the basic foundation of the Kim Il-sung religion so that will mean more difficulty for the leadership to maintain or the control of the society. So if the North Koreans start to realize that Kim Il-sung might not be the real god and there might be some other god out there then it's not a good thing for the leadership and that's why they wanted to avoid all the other religions occurring in North Korean society and persecuted other religions."*[257]

243. The DPRK Constitution provides for freedom of religion in article 68. This is a qualified right as approval must be sought for the construction of religious buildings and the holding of religious ceremonies. It further provides that, "Religion must not be used as a pretext for drawing in foreign forces or for harming the state and social order".

2.1 The Great Leader Comrade KIM Il Sung is a genius of the revolution, the sun of the people and a legendary hero whom we must respect unendingly, revere eternally and come to with the greatest happiness and glory.

2.3 Believe firmly in the way pointed to by our Great Leader Comrade KIM Il Sung, entrust our fate to the Great Leader and devote our bodies and spirits for the revolutionary fight driven by the Great Leader, carrying with us always, the strong belief that there is nothing impossible if we are under the leadership of the Great Leader.

3.1 Have a firm position and perspective that no one else has the knowledge required, only the Great Leader Comrade KIM Il Sung.

3.6 Respectfully worship our beloved Great Leader Comrade KIM Il Sung's sculptures, plaster casts, bronze statues, badges with portraits, art developed by the Great Leader, board with Great Leader's instructions, basic mottos of the Party.

4.3 Unconditionally accept, treat as a non-negotiable condition, and decide everything based upon our Great Leader Comrade KIM Il Sung's instructions and in every act think only about the greatness of our Leader.

4.10 Fight with all one's will against anti-Party and anti-revolutionary thinking trends that have its origin in capitalistic ideas, feudal Confucian ideas, revisionism, dogmatism, toadyism and are contrary to the revolutionary thought of the Great Leader KIM Il Sung. Hold on to the purity of revolutionary thought and Juche ideas of the Great Leader.

5.2 Regard as a holy duty and supreme glory reducing the concerns of our Beloved Leader Comrade KIM Il Sung and fight for it with complete dedication.

[256] Seoul Public Hearing, 22 August 2013, afternoon (02:32:10).

[257] Washington Public Hearing, 30 October 2013 (02:45:50).

244. Christianity has a long history in Korea with first contacts dating back to the 17th century. It gained particular traction in the North, and Pyongyang was sometimes described as the "Jerusalem of the East".[258] In the 20th century, Cheondogyo, a religion blending elements of Confucianism, Taoism and Buddhism emerged and also gained a large number of followers. Christian Solidarity Worldwide quoted an estimate of more than 28 per cent of the population that had a religious belief in 1950, whereas the 1950 Yearbook of the Workers' Party of Korea placed the figure at almost 24 per cent. Based on figures provided by the DPRK to the Human Rights Committee, it is estimated that only 0.16 per cent of the population followed a religious belief in 2002.[259] Basically, according to official statistics, there were approximately 38,000 DPRK nationals who were religious believers in 2002 compared to over 2 million in 1950 (noting that in 1950, the entire population was reported to number 9 million, compared to approximately 23 million in 2002).[260]

(b) Religious persecution

245. Information received by the Commission indicates that religious persecution in the DPRK commenced before the Korean War. While the rhetoric was that of conciliation and unity with guarantees of religious freedom, a parallel message being issued was that religious people are pro-imperialist and pro-feudalist.[261] The overall period of religious oppression has been described as being divided into four phases (1946-1950: Pre-Korean War; 1950-1953: Korean War; 1953-1971: pre-Kimilsungism movement; 1972-present: era of *Juche*),[262] with the Korean War and pre-Kimilsungism movement periods described as the most vicious in the persecution of religious believers. Religious people were killed, exiled and imprisoned. Christians were said to have been targeted the most as the movement of Christianity was much more organized than the other religions and because of its supposed connection with the USA. Towards the end of the third phase and in preparation for the fourth and current phase, members of the Chondo Party, Christians, and Buddhists were included in the Hostile Class under the *Songbun* system.[263]

246. The independent exercise of Christianity grew in the 1990s, as people who fled to China during the height of the food crisis came into contact with, and often received aid from, local churches. Witnesses claimed the existence of underground churches in the DPRK referring to instances where Christians congregate secretly in homes or other places to practise their religion. It has been suggested that clandestine religious activities have increased since the early 2000s, although more specific details have been difficult to obtain.[264] One estimate suggests that there are between 200,000 and 400,000 Christians still professing their religion secretly in the DPRK despite the high risks.[265]

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[258] Andrei Lankov, "North Korea's missionary position", *Asia Times Online*, 16 March 2005. Available from http://www.atimes.com/atimes/Korea/GC16Dg03.html; Michael Breen, Moon Sun-myung, "The Early Years, 1920-53: Chapter 6 – Jerusalem of the East". Available from http://www.unification.org/ucbooks/earlyyears/Chap06.htm.

[259] HRI/CORE/1/Add.108/Rev.1, p. 10; CCPR/CO/72/PRK/Add.1, p. 3.

[260] Christian Solidarity Worldwide, "North Korea: A Case To Answer – A Call To Act", 2007, p. 65. Available from http://dynamic.csw.org.uk/article.asp?t=report&id=35.

[261] Won Jae-chun, "Religious Persecution in North Korea: Process and phases of oppression 1945-2011", *International Journal for Religious Freedom*, vol. 4, No. 1 (2011), pp. 87-100.

[262] Database Center for North Korea Human Rights (NKDB) divided it into six periods covering from 1945-present: see "Religious Freedom in North Korea", January 2013, pp. 28-41.

[263] Won Jae-chun, "Religious Persecution in North Korea: Process and phases of oppression 1945-2011", pp. 87-100.

[264] NKDB, "Religious Freedom in North Korea", pp. 41, 98-102.

[265] Submission to the Commission: SUB048.

247. Generally, the DPRK's policy towards religion has been described to be a dual one through which an appearance of religious tolerance is maintained for the international audience while in fact religious activities are suppressed internally.[266]

248. In the DPRK's UPR submission, it highlighted the existence of several officially recognized Christian congregations and associations of believers of other religions. It was submitted that:

> There are such religious organizations as Korea Christian Federation, Korea Buddhists' Federation, Korea Roman Catholic Association, Korea Chondoist Society and Korea Religionists' Society. In recent years the Pongsu Christian Church, the Janchung Roman Catholic Church in Pyongyang and Ryongthong Buddhists' Temple in Kaesong have been rebuilt and expanded, and the Singye Temple in Mt. Kumgang and Bopun Temple in Mt. Ryongak restored to their original state. A Russian Orthodox Church was built in Pyongyang in August 2006, where Russian religious persons staying in the DPRK are holding religious ceremonies. The publications of the religious organizations include 'Chondoism Scriptures', 'Chondoism Digest', 'The Old Testament', 'Hymn', 'Choice and Practice', 'Let's learn Roman Catholicism', 'Steps of Religious Life' and 'Catholic Prayer'.[267]

249. Further, according to DPRK's submission to the Human Rights Committee in December 1999:

> There are religious educational institutions managed by religious bodies. The Central Committee of the Korean Christians Federation runs the Pyongyang Theological School, the Central Committee of the Korean Buddhists Federation [runs] the School of Buddhism, the Korean Central Guidance Committee of the Believers in Chondogyo [runs] the Chondogyo Secondary School, and the Central Committee of the Korean Association of Roman Catholic also educates students. In 1989 the state newly established the Department of Religion in Kim Il Sung University in view of the desire of some school parents for such education of their children.[268]

250. There are reportedly also some "house churches" which the DPRK government recognizes and claims to number 500.[269] The participants in these gatherings are apparently individuals whose families were Christians before 1950; and as such, they are allowed to gather for worship without leaders or religious materials. Most of the house churches are in urban areas and the families who attend are often segregated in separate housing units. The religious studies that were established in 1989 in the Kim Il-sung University cover Protestantism, Catholicism, Buddhism, Cheongdyo and Islam.[270]

251. However, witnesses have claimed that the opportunity to undertake such studies is limited to only very loyal citizens, and those who graduate from these studies include those who carry on to become ministers of state-approved churches. Further, the Commission learned from witnesses that state-approved churches exist for the purpose of earning foreign currency, as those affiliated with such churches are meant to contact foreigners and raise

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[266] NKDB, "Religious Freedom in North Korea", p. 28.

[267] A/HRC/WG.6/6/PRK/1, para. 45.

[268] CCPR/C/PRK/2000/2, para. 116.

[269] U.S. Commission on International Religious Freedom (USCIRF), "2013 Annual Report", April 2013, p. 111. Available from http://www.uscirf.gov/reports-and-briefs/annual-report/3988-2013-annual-report.html.

[270] KBA, *2012 White Paper on Human Rights in North Korea*, p. 262.

externally-sourced funds.[271] According to one report, former attendees of the university said, "graduates from [the university] programme work for the religious federations, the foreign trade sector, or as border guards seeking to identify clandestine religious activity". The same report alleges that state-approved churches are showpieces for foreign visitors.[272] Witnesses have also told the Commission that the churches that have been established with permission by the state are not true churches that are open to those who want to practise Christianity freely.[273]

252. Based on first-hand testimonies received from Christians in the DPRK, one organization has surmised that: (i) no churches as such exist in the DPRK except in Pyongyang, and it was questionable how far the family (or house) churches sanctioned by the authorities are functioning or free to carry out their activities; (ii) churches and temples that do exist are substantially used for external propaganda and political purposes; and (iii) all former DPRK citizens interviewed stated that one would certainly be persecuted for practising religion at a personal level.[274] Buddhist temples and shrines are reported by former DPRK nationals to be maintained only as heritage and cultural sites, and not as functioning places of worship.[275]

(c) Practising Christianity as a political crime

253. The Commission finds that despite the establishment of several churches with state approval apparently confined to Pyongyang, the messaging from the state to the people regarding Christianity clearly suggests that ordinary citizens in the DPRK are not permitted to be open to Christianity. It has been compared to a drug, narcotics, a sin, and a tool of Western and capitalist invasion. Christian missionaries are portrayed as the product of USA capitalism and work akin to vampirism.[276] This appears in line with what Kim Il-sung has been quoted to have stated regarding religion: "Religion is a kind of myth. Whether you believe Jesus or Buddha, it essentially believes a myth [sic]." He had also further directed that, "we cannot take religious people to the socialist society" and "religious people should die to cure their habit".[277]

- Mr Kim Song-ju at the London Public Hearing told the Commission: *"To my knowledge, North Korea believes that religion is like narcotics or drugs, and, as a result, it should be completely rooted out. This is expressive of the Marxist belief that religion is the opiate of the masses."*[278]

254. Although the practice of Christianity is not explicitly criminalized, effectively the authorities consider it a political crime. The Commission finds that the SSD makes concerted efforts to identify Christians. One report describes how security agents are trained to suppress religious activities, and how they are rewarded for uncovering clandestine activities on the basis that religious practitioners are deemed political offenders. These agents also spoke of being trained in religion so that they might infiltrate prayer meetings or pose as religious leaders, and even set up false underground religious

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[271] Mr Timothy, Seoul Public Hearing, 22 August 2013, afternoon; TLC018.

[272] USCIRF, "2013 Annual Report", pp. 110-111.

[273] Mr Timothy, Seoul Public Hearing, 22 August 2013, afternoon; TLC024.

[274] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 270-271.

[275] USCIRF, "2013 Annual Report", p. 111.

[276] Mr Timothy, Seoul Public Hearing, 22 August 2013, afternoon; TLC018; a witness included in one submission to the Commission described having heard a story as a child of Christians living secretly in basements of hospitals and luring innocent people who were killed and whose blood were sucked and sold to bad people. SUB048.

[277] See KBA *2012 White Paper on Human Rights in North Korea*, p. 255 and footnote 33.

[278] London Public Hearing, 23 October 2013, session 1 (01:05:06).

meetings.[279] Identified Christians are interrogated for longer periods, usually under torture, in an effort to identify other members of underground Christian churches. The SSD also monitors the activities of the Korean churches in China and systematically interrogates persons repatriated from China to identify practising Christians among them.

255. One submission, based on extensive testimonies from Christians clandestinely practising their religion within the DPRK, presented three reasons why Christians are sought by the authorities and seen as political criminals: "(1) [They] do not genuinely worship the leaders, adhere to another ideology and therefore pose a threat to the stability of the society; (2) [They] are considered to be spies of 'Christian states like South Korea and the United States'; and (3) [They] are held responsible for the end of the communist bloc in Eastern Europe and the Soviet Union. In Poland, the Roman Catholic Church was a strong opposing force for example. The protests that ended Nicolae Ceauşescu's regime in Romania were triggered by a Hungarian [Protestant] pastor, Laszlo Tokes, who publicly criticized the government and refused to be evicted from his church-owned apartment."[280]

256. The Commission heard from numerous witnesses that those forcibly repatriated from China were systematically interrogated about whether they made contacts with churches and missionaries from the ROK and the USA. Those found to have engaged in such conduct faced harsher punishment upon repatriation including being sent to a political prison camp if they made contact with any foreigners including American or South Korean missionaries.[281] The Commission received the following testimony:

- One witness explained that she had been specifically questioned following repatriation about whether she had gone to church in China. She was caught again another time when she left the DPRK for China and was tortured and detained for one year to confess that she was a Christian. She was informed that her friend had told the authorities of her belief in Christianity. She refused to confess and was sent to *Kyohwaso* No. 11.[282]
- Mr Timothy's father studied Christianity in an "underground church" in China; and in 2003, he was arrested with 39 other North Korean Christians. They were all repatriated, and his father was sent to Yodok Camp. Because of his father's arrest, Mr Timothy who was about 14 years of age at the time was also sent to a labour training camp for one year. He nonetheless became a Christian and spent several years secretly propagating Christianity in the DPRK. He knew he had to do this in secret because otherwise he risked being arrested and sent to a political prison camp for his actions. He also spoke of a fellow Christian who had been sentenced to a political prison camp because of his religious belief.[283]
- Both of Mr A's sisters were punished severely for their religious belief and activities. One was discovered to be preaching Christianity to a friend and was caught with a Bible resulting in a 13 year sentence in an ordinary prison camp (*kyohwaso*). The other was caught in China. As a result of the starvation rations and horrendous living conditions, the first sister almost died in prison and only survived after Mr A paid a substantial bribe to free her after three years of confinement. The other sister was labelled a political criminal because it was discovered that she had

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[279] USCIRF, "A Prison Without Bars", March 2008, chapter 5; USCIRF, "2013 Annual Report", pp. 108-116.

[280] Submission to the Commission: SUB048.

[281] Korea Institute for National Unification (KINU), Seoul Public Hearing, 21 August 2013, afternoon; TAP013.

[282] TBG006.

[283] Mr Timothy, Seoul Public Hearing, 22 August 2013, afternoon.

practised Christianity in China and had also attempted to flee to the ROK. She was sent to Yodok Camp and was never heard from again.[284]

- In 2006, China forcibly repatriated Mr Kim Song-ju's mother to the DPRK. According to his testimony, the Chinese authorities informed their DPRK counterparts that his mother had practised Christianity in China. The SSD interrogated Mr Kim's mother for six months before she was sentenced to three years in a *kyohwaso*. However, because of the harsh treatment and the starvation conditions experienced in SSD detention, she was too weak to be sent directly to prison. The police sent her to the local hospital instead. There she was tied to the bed. Mr Kim's uncle went to visit her, but she was too weak to eat the food he brought. Mr Kim's mother starved to death, tied to her hospital bed. The MPS did not notify her relatives so they were unable to recover her body.[285]
- One witness gave information that he believed that his son was arrested by the SSD and sent to *Kwanliso* No. 18 because he had taken Bible studies in China with a Korean American pastor who was then under the surveillance of the SSD.[286]

257. In 2011, a woman from Ryanggang Province narrowly escaped arrest by KPA Military Security after a fellow believer gave away her name under torture. She and other witnesses also informed the Commission of how people who were caught in the possession of Bibles were tortured during interrogation and in some cases executed afterwards.[287]

258. Despite the toleration of a limited number of state-authorized houses of worship in Pyongyang and some suggestions to the contrary, the Commission finds that there is no effective freedom of religious belief in the DPRK. Such belief is treated as basically incompatible with, and hostile to, the state-sponsored personality cult surrounding Kim Il-sung and his descendants. Countless numbers of persons in the DPRK who attempt to practise their religious beliefs have been severely punished, even unto death. In consequence, the population of religious adherents in the DPRK has fallen from about 24 per cent of the population in 1950 to only 0.16 per cent of the population in 2002, estimates provided by the DPRK itself.

5. Principal findings of the commission

259. Throughout the history of the Democratic People's Republic of Korea, among the most striking features of the state has been its claim to an absolute information monopoly and total control of organized social life. Based on witness testimonies, the Commission finds that there is almost complete denial of the right to freedom of thought, conscience, and religion as well as of the rights to freedom of opinion, expression, information, and association.

260. The DPRK operates an all-encompassing indoctrination machine which takes root from childhood to propagate an official personality cult and to manufacture absolute obedience to the Supreme Leader (*Suryong*), effectively to the exclusion of any independent thought from the official ideology and state propaganda. Propaganda is further used by the Democratic People's Republic of Korea to incite nationalistic hatred towards official enemies of the state: Japan, the United States of America, and the Republic of Korea, and their nationals.

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[284] Seoul Public Hearing, 22 August 2013, afternoon.

[285] London Public Hearing, 23 October 2013, session 1 (with additional details provided by the witness in a confidential interview).

[286] TJH010.

[287] TJH017, TJH018, TSH039.

261. Virtually all social activities undertaken by citizens of all ages are controlled by the Workers' Party of Korea. Through the associations which are run and overseen by the Party, and to which DPRK nationals are obliged to be members, the state is able to monitor its citizens as well as to dictate their daily activities. State surveillance permeates the private life of all citizens to ensure that no expression critical of the political system or of its leadership goes undetected. DPRK nationals are punished for any "anti-state" activities or expressions of dissent. They are rewarded for reporting on fellow citizens suspected of committing such "crimes".

262. Citizens are denied the right to access information from independent sources as state-controlled media is the only permitted source of information in the DPRK. Access to television and radio broadcasts, as well as the Internet, is severely restricted, and all media content is heavily censored and must adhere to directives issued by the Workers' Party of Korea. Telephone calls are monitored and mostly confined to domestic connections for its citizens, who are punished for watching and listening to foreign broadcasts, including foreign films and soap operas.

263. Strengthening market forces and advancements in information technology have allowed greater access to information from outside the country as information and media from the ROK and China increasingly enter the country. The state's information monopoly is therefore being challenged by the increasing flow of outside information into the country and the ensuing curiosity of the people for "truths" other than state propaganda. Authorities seek to preserve the status quo by carrying out regular crackdowns and enforcing harsher punishments, to halt the inflow of information and ideas.

264. The spread of Christianity is considered by the DPRK a particularly serious threat since it ideologically challenges the official personality cult and provides a platform for social and political organization and interaction outside the state realm. Apart from the few organized state-controlled churches, Christians are prohibited from practising their religion. Christians caught practising their religion are subject to severe punishment in violation of the right to freedom of religion and the prohibition of religious discrimination.

B. Discrimination on the basis of State-assigned social class (*songbun*), gender and disability

265. The Universal Declaration of Human Rights in Article 2 states:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

266. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) similarly note the non-discrimination principle in ensuring the rights elaborated in these treaties that the DPRK has ratified. Article 2 of the Convention on the Rights of the Child (CRC) further explicitly calls for states to take "all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".

267. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines in article 1:

> For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

268. Article 3 of the ICCPR also stipulates that State parties to the Covenant must undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights.

269. Article 2 of the CEDAW prohibits discrimination against women and stipulates equality between the sexes must be pursued in all areas including through the provision of protection and abolishment of discriminatory laws, regulations and customs.

270. According to the Convention on the Rights of Persons with Disabilities,

> "Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation."

1. Discrimination based on social class and birth: the *songbun* system, past and present

271. Through the *Songbun* system, the state places citizens of the DPRK into three broad classes with approximately 51 more specific categories, although the actual categories seem to have been adjusted over the years.[288] Decisions about residency, occupation, access to food, health care, education and other services have been contingent on *songbun*. *Songbun* is also reflected through geographic segregation.[289]

272. Elites are concentrated among the population officially permitted to live in Pyongyang, which has a population of 3.3 million according to the 2008 population census. The ruling elites among them are assigned to live in the most modern part of the capital. Goods and public services in Pyongyang are superior to those in other regions. Ordinary citizens of low or medium *songbun* are precluded from residing in Pyongyang, and even obtaining the right to visit Pyongyang is difficult.

- Mr Kim Soo-am of the Korea Institute for National Unification [of the Republic of Korea] described the continuing impact of *songbun* at the Seoul Public Hearing:

  "Family background is also a core factor in discriminating between people, allowing different levels of access to the right of food. The core elites who live in Pyongyang or other major cities still receive benefits in terms of medicine, and those who live in the ri [villages], the level of residents, they have very limited access to medical facilities, so the rights to enjoy healthy life [are] also discriminated and not guaranteed..."[290]

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[288] The classes reflect the assumed political loyalty of an individual's family to the DPRK's political system and its leadership. One former official noted that there are actually 103 *songbun* classes today and that he had provided this documentation to the government of the ROK, TBG031.

[289] Section IV.C.

[290] Seoul Public Hearing, 21 August 2013, afternoon (02:31:00).

- A witness at the Seoul Public Hearing, Ms Kwon Young-hee, described the discrimination that her family confronted because both her parents were originally from South Korea. The family encountered discrimination when they sought to leave Musan in North Hamgyong Province and move to Pyongyang:

  "I learned about the fact that we were not able to relocate to Pyongyang. By the time we learned about the rejection we were old enough to understand that we were discriminated against, because my elder sister against her wish had to apply to this other college and so my siblings suffered from this kind of discrimination."[291]

273. The *Songbun* system saw antecedents in the early policies of the DPRK when the leadership sought to elevate peasants and laborers over the former landlords and those they deemed to have been Japanese collaborators. In 1946, the North Korean Provisional People's Committee began to purge officials who had been associated with the Japanese colonial administration and undertook the first citizen registration campaign. The official start of the *Songbun* system appears to have been in 1957 when the Party adopted the resolution "On the Transformation of the Struggle with Counterrevolutionary Elements into an All-people All-Party movement" (the May 30th Resolution). The adoption of this resolution was linked to a purge of potential rivals by Kim Il-sung. At that time, the division of people coalesced into three broad categories of core, wavering and hostile.

274. In conjunction with the May 30th Resolution, the Cabinet issued Decree No. 149 that dictated where members of the hostile class could reside and essentially exiled a large number of people to more remote parts of the country with more difficult living conditions. Other stages in the institutionalization of the *Songbun* system include the 1964 resolution "On Further Strengthening the Work with Various Groups and Strata of the Population", which launched another campaign to refine the *Songbun* system. In 1966, a resident re-registration drive which lasted until 1970 led to the re-classification of the population into the three classes with 51 sub-categories.[292] Other campaigns to re-examine political loyalty

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[291] Seoul Public Hearing, 24 August 2013, morning (02:57:55).

[292] The 51 categories are Core class: People from the families of laborers, hired people from the families of laborers, hired peasants (farm servants), poor farmers, and administrative clerical workers during the Yi Dynasty and Japanese occupation, Korean Workers' Party bereaved families of revolutionaries (killed cadre members, in anti-Japan struggles), bereaved families of patriots (killed as noncombatants during the Korean War), revolutionary intellectuals (trained by North Korea after liberation from Japan), families of those killed during the Korean Wars, families of the fallen during the Korean War, servicemen's families (families of active People's Army officers and men), and families of honored wounded soldiers (family members of service members wounded during the Korean War); Basic class: Small merchants, artisans, small factory owners, small service traders, medium service traders, unaffiliated persons hailing from South Korea, families of those who went to the South (3 distinct categories), people who formerly were medium-scale farmers, nationalistic capitalists, people repatriated from China, intellectuals trained before national liberation, people from the core class who are deemed lazy and corrupt, tavern hostesses, practitioners of superstition, family members of Confucianists, people who were previously locally influential figures, and economic offenders; Complex (wavering and hostile) class: Wealthy farmers, merchants, industrialists, landowners or those whose private assets have been completely confiscated, pro-Japan and pro-US people, reactionary bureaucrats, defectors from the South, members of the Chondoist Chongu Party, Buddhists, Catholics, expelled party members, expelled public officials, those who helped South Korea during the Korean War, family members of anyone arrested or imprisoned, spies, anti-party and counter-revolutionary sectarians, families of people who were executed, anyone released from prison, and political prisoners, members of the Democratic Party, capitalists whose private assets have been completed confiscated. KINU, *White Paper on Human Rights in North Korea* (2012), p. 222, citing source as Ministry of Unification report, "An Overview of North Korea", 2000, p. 420.

and family background followed, such as the 1983-84 citizenship identification card renewal project.

275. The highest *songbun* was awarded to family members of guerrillas who fought with Kim Il-sung against Japanese forces (although many of them were eventually subject to purges over the years).

- One former high-level official explained to the Commission that he knew of his *songbun* status since he was about 10 years old as there had been a certificate in his family home about his grandfather's involvement in the Korean War. He was also told by his family not to play or associate with those of a lower status. He grew up believing that a high *songbun* meant that one was closer to the Kim family.[293]

276. The lowest *songbun* was given to, among others, formerly wealthy industrialists, alleged spies, Catholics and Buddhists. In effect, a family's history even before the establishment of the DPRK pre-determined a citizen's destiny in the DPRK.

277. In the past, *songbun* was the key factor determining the course of every citizen from birth. Higher *songbun* determined whether a person could gain access to the army (particularly the more elite units), university and the Workers' Party of Korea—necessary preconditions to any future career in public service. Conversely, those with lower *songbun* were often assigned to jobs in mining and farming, and their descendants often were excluded from higher education. Hard work, individual ability and personal political loyalty provided only limited opportunity to improve one's *songbun*. However, conduct deemed to be politically disloyal could destroy the favourable *songbun* of individuals and their entire family.

278. The determination of *songbun* is recorded in a comprehensive resident registration system with detailed files on all adult citizens and their families. The systematic compilation of these files by security agencies and institutions of the Workers' Party of Korea is not a transparent process, and determinations cannot be contested.[294] Moreover, official discrimination under the *Songbun* system is also an intergenerational phenomenon, where an individual's classification is not only determined by his or her personal conduct, but also by the *songbun* classifications derived from more than one generation of the person's extended family. Therefore, a system of perpetual discrimination on the ground of birth, akin to a caste-based system, has emerged in the DPRK.

279. The existence and relevance of *songbun* status does not appear to have been formally encoded in law. However, it tacitly reverberates in constitutional references to the working people becoming the masters of society and exhortations that all citizens and organs of the state should struggle staunchly against class enemies.[295] The concept is also invoked in internal guidance and training documents.[296] Former security and party officials interviewed by the Commission indicated how consideration of *songbun* prominently featured in important decisions relating to a person. For example, a former official explained to the Commission that the Ministry of Public Security color-coded files according to a person's *songbun*. The files of core class families were placed in red folders,

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[293] TSH019.

[294] TJH022, TJH023.

[295] DPRK Constitution, articles 8 and 162.

[296] The 1993 Ministry of Social Safety publication of a document entitled, "Resident Registration Project Reference Manual" issued a set of instructions for resident registration investigators to use during the conduct of their *songbun* investigations. See Robert Collins, "Marked for Life: *Songbun* North Korea's Classification System", Committee on Human Rights in North Korea (HRNK), 2012.

while those of families whose members included an inmate of a political prison camp (*kwanliso*) were placed in a black folder.[297]

280. *Songbun* appears also to be an important factor when considering the punishment for a criminal offense. As one witness explained, when someone with higher *songbun* commits the same crime as someone with lower *songbun*, the one with the higher *songbun* will get the lighter punishment. When someone is sent to a detention centre by a security agency, what will be assessed first is the person's family tree and background. If the individual comes from the core class (i.e. has higher *songbun*), then, regardless of the crime, the individual will be treated relatively well on the assumption that the individual had no intention of betraying the country. If the individual comes from a lower *songbun*, then the person is assumed to be "built" to do bad things, and will receive a harsher punishment.[298]

- Ms Kwon Young-hee told the story of her brother who was arrested in China and forcibly repatriated to the DPRK during the mourning period for Kim Il-sung in 1994. Instead of being treated as an "economic" offender for going to China illegally, he was charged as a political prisoner.

  "Just because our parents were from the South, if we do commit a crime or commit an offence, we always get heavier punishments. I think that was one of the most unfair things and that is why one of my brothers cannot be found, one of my brothers was sent to the prison."[299]

281. It is difficult to verify the exact proportions of different *songbun* classes today and to know how much these have changed over time. Figures from 2009 suggest the core class to be about 28 per cent of the population, while the basic class constitutes 45 per cent, and the complex (wavering and hostile) class constitutes the remaining 27 per cent.[300] Within the core class, there is a ruling elite. This group is sometimes referred to as the revolutionary class, as it is comprised of the extended family of Kim Il-sung and a small number of other families who usually have a forebear of the highest level *songbun*. The ruling elite includes the families of Political Bureau members and secretaries of the Workers' Party of Korea, members of the Central People's Committee, the State Administration Council, the Central Military Commission and the National Defense Commission.[301] They are directly involved in the preparation of major policy decisions and participate in the inner circle of policy-making.

282. The broader elite are those individuals with core class *songbun*[302] who continue to dominate the central and local administrative structures, the broader corps of officers in the military and the security agencies, and other managerial positions. Both the ruling and broader elite are able to use their official powers, privileges to move freely around the country, access to state resources and social connections to seize opportunities arising from the DPRK's increasing marketization.

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[297] TCC014.

[298] TAP011.

[299] Seoul Public Hearing, 24 August 2013, morning (02:05:00). Other testimonies in section IV.A.

[300] The three broad areas appear to have shifted over time to where the wavering and hostile classes together have been condensed into a "complex" category and the middle category is characterized as the "basic" category. These figure from the Korea Institute for National Unification, *An Overview of North Korea* (2009), p. 330.

[301] "Because overlapping membership is common in public office, top-ranking office holders number less than 100": Federal Research Division Library of Congress, Robert L. Worden ed., *North Korea: A Country Study* (2009), p. 211.

[302] Twenty-eight per cent of 23.3 million total population amounts to about 6.5 million.

283. Intergenerational responsibility and collective punishment are core elements of the *songbun* system. Despite auspicious family origins, *songbun* can be lowered if a person or his or her relative commits a crime in the DPRK.[303] *Songbun* status appears to be particularly affected by offenses deemed to be of a political nature.

- Mr Kang Chol-hwan, a former political prisoner, gave testimony to the Commission's at the Seoul Public Hearing in these terms:

  "My grandmother was a member of the Communist Party for a long time, and she was instrumental, actually played a very important role in setting up the North Korean Communist Party in Japan.... My grandfather was doing business, so he was quite rich, so he was able to donate a lot of money to the North Korean government. So my grandmother was quite high up in the government. At that time, my grandmother was the vice chairperson to an organization which was headed by the wife of Kim Il Sung. And my grandfather was very high up in the business network that included department stores. When I was born, I belonged to a very top class and I was born at the centre of Pyongyang, so when I was young, I think I was very happy. And compared to other North Korean residents, I think I was a very happy child. And then in 1977, my grandfather went to work and then he didn't come back for one month. So we went to his workplace to find out why, and we were told that he went on a business. And then [someone] from the Bowibu, that is the State Security Department of North Korea, came to us and said that our grandfather committed treason to the state as well as the people, that he deserved to die, but that instead of giving him the death penalty, that he was taken somewhere else. Our properties were confiscated. On the 4th of August in 1977, our families were brought into the Yodok political prisoner camp. I was 9 years old. It was [the] 8th of August 1977, that's when we were taken to the political prison camp."[304]

- Another witness interviewed by the Commission, Kim Hye-sook,[305] a 51-year old woman, was detained in Camp No. 18 from 1975 until 2001. In October 1970, her entire family was arrested. She only initially escaped arrest because she had been living with her maternal grandmother from the age of 13, but the authorities seized her five years later. Only after her release in 2001 did Ms Kim find out that her family was sent to the camp because her paternal grandfather had moved to the ROK during the Korean War, leaving Ms Kim's father and grandmother behind.[306] Ms Kim found that she could not reintegrate into society and decided to go to China in 2005.

284. Administratively, the *Songbun* system is based on carefully recorded information on every DPRK citizen and his or her family. The state authorities established a comprehensive resident registration file on every citizen aged 17 and older.[307] These files contain biographical information including genealogy and indications of ideological steadfastness and political loyalty, which are ascertained through evaluations of a person's performance in different circumstances such as acts at work and through the weekly "confession and criticism" sessions.[308] Information collected could include skills and talents, ambitions and health status, as well as the enthusiasm with which an individual

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[303] See section IV.C.

[304] Seoul Public Hearing, 24 August 2013, afternoon (03:06:30).

[305] Ms Kim could not participate in the public hearings. The Commission conducted a video-conference-based interview with her, during which she agreed to have her name published in this report.

[306] Also TBG024.

[307] TJH004, TJH015.

[308] See section IV.A.

dusts off the portraits of Kim Il-sung and Kim Jong-il, pays tribute at their shrines, keeps up with revolutionary history studies, or carries out duties at construction projects.[309]

- A witness saw his own brother's resident registration file in 2006, and described how it noted details about the family, including dates when people had moved around the country and details of the family's connections since 1949. The file also noted the date when the witness's brother had joined the military. The witness had heard that such files existed, but this was the first time he had seen one for himself. The witness's family was able to see the resident registration file when security officers came to their house asking about the whereabouts of the witness's brother, who had fled the DPRK.[310]

- Another witness saw *songbun* files because his father was a high-level official, and other people had brought over confidential papers that he was able to read. The files seen by the witness contained a photograph, the grandfather's name, the person's good and bad activities (for example, fighting against the Japanese), in addition to three or four signatures of witnesses to these activities. According to the witness, these documents would be checked by officials in cases where an individual seeks a promotion or is accused of having committed a crime.[311]

285. Individuals' resident registration files follow them throughout their life. If and when that individuals serve in the military, enters university or joins the workforce, their file is sent to the relevant overseeing authority. A continuing assessment of an individuals' loyalty to the state would be reflected in the file. At any point when an individual's loyalty "score" appears low, that individual would be criticized harshly, monitored even more closely, and, in the worst cases, sent for training through labor.[312] Low scores can affect applications to enter university or promotions at work. However, individuals are seldom informed of the actual reasons behind an unsuccessful application or lack of advancement at work, even though they can usually infer that the reason is poor *songbun*.[313]

286. The local branches of the Ministry of Public Security are tasked to prepare resident registration files based on information provided by the workplace, school, local neighborhood watches and mass organizations. Officials overseeing the mass associations, to which every DPRK citizen must belong, are responsible for collecting relevant information and including them in these files.[314] In addition, the Ministry of Public Security maintains a vast network of secret informants.[315]

287. Resident registration files record all available information on the background of family members, in some cases going back as far as the Japanese colonial period. The original files are kept in hardcopy by the Ministry of People's Security.[316] Other security agencies and the Workers' Party of Korea receive copies that are also accessible to relevant senior local cadres like the manager of a person's workplace. In addition, files of family members are cross-referenced. This makes it virtually impossible to alter a file without risking eventual detection and subsequent harsh punishment.

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[309] TAP006.

[310] TSH009.

[311] TLC035.

[312] TAP007.

[313] TAP002, TAP008.

[314] TAP006, TAP015, TLC035, TSH009.

[315] TSH051.

[316] There is some information indicating that the resident registration file has also been computerized since the early 2000s, although it is not clear how far access is granted in consideration of the risk of leaks.

- For example, a witness's uncle disappeared into a political prison camp because of unfavorable remarks he made about Kim Jong-il. The uncle's disappearance stained the *songbun* of the entire family. The witness graduated in 1994 and passed the entry level exam for political cadres. Only then did his father reveal to him the uncle's fate and told him that he would be prevented from a political career and could at best reach administrative or technical positions. Through Ministry of Public Security contacts and bribes, the family was able to see the witness's resident registration file, where two lines about the uncle had been added. They discussed with the Ministry agent whether the line could be removed against a bribe, but decided against it. Each file has cross-references to other files. If it was ever found out that the witness's file was tampered with, the repercussions for the entire family could have been very serious. Eventually the witness took up a position as a technical expert. He was denied promotions and the chance to pursue further studies. His older brother, who served with distinction in the military and was recommended for the officer track, was denied entry to the military academy due to the family *songbun*. His younger brother and the father experienced similar problems.[317]

288. Individuals are not normally given official access to their own resident registration files.[318] Thus, they do not have the opportunity to contest or correct information contained in the files. The witnesses interviewed by the Commission who had seen their own resident registration files had all gained such access through informal connections and/or bribes.[319]

- For example, a former SSD official who was frustrated with his lack of advancement at work sought to see his own resident registration file, which a colleague showed him. In it he found an element that made it clear to him that he would not be promoted.[320]

289. Most people have a general idea of the existence of the *Songbun* class system and where they fall in the order. Often, DPRK citizens became aware of their *songbun* when graduating from school, or when they experience barriers to gaining entrance to the military, university or preferred professions. Many former DPRK citizens interviewed by the Commission were aware of the types of considerations that would go into determining their *songbun* and the effects that their class may have had on their access to higher education or employment.[321]

- For example, a witness was denied tertiary educational opportunities and was forced to work in a mine upon finishing secondary school. When he inquired of a security supervisor to whom he was close about the apparent discrimination against him, the supervisor showed him his file. He was classified as a "No. 43", the classification of familes of prisoners of war, which made it clear to him why he faced such discrimination.[322]

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[317] TJH007.

[318] *Songbun* is not mentioned on the ID cards issued to people. Ordinary people will not be informed about their *songbun* (TCC014).

[319] TLC018.

[320] TJH041.

[321] Witness TJH037 only learned why he had low *songbun* after fleeing the DPRK and being told by his mother in the ROK that his grandmother had been a landlord. His first attempt to flee when he was captured and repatriated had been because he did not want to undergo 10 years of military service as is the usual case for those people who do not have high *songbun*.

[322] TBG021.

290. Factors in determining social class include family origins. Koreans who had resided in Japan and emigrated to the DPRK between 1959 and 1980 (called "returnees"), together with their descendants are estimated to number between 100,000 and 150,000.[323] These Koreans were drawn to the DPRK by propaganda and promises of opportunity, as well as widespread discrimination against ethnic Koreans in Japan. Upon arrival, they were not permitted to leave the DPRK. They were, however, allowed to solicit money transfers from relatives in Japan which provided much-needed foreign reserves for the DPRK. The government operated hard currency stores for luxury goods like televisions and refrigerators and other items not generally available to average DPRK citizens. These remittances provided former Japanese residents with better clothes and food, which fueled some degree of resentment amongst their less fortunate compatriots.

291. In 1960, the Hungarian Ambassador to the DPRK, Károly Práth, noted the situation of almost 31,000 Koreans from Japan who had arrived in the DPRK:

> "Apart from formalities, the Korean workers do not like the repatriates very much. They have several reasons for that: 1) A great number of people have been removed from their flats so as to provide adequate flats for the repatriates; 2) In the factories, they get strikingly high wages; 3) They occupy a privileged position in food-supply; 4) Work discipline is less binding on them (at least they are not taken to task in the same way as others); 5) In respect of clothing and way of life, they are different from the local people."[324]

292. Several witnesses recounted discrimination suffered as children where they were ostracized by teachers and other students for their family origins.

- Ms Chiba Yumiko, a former Japanese "returnee", testified in the Tokyo Public Hearing about her experience in the DPRK. She noted that discrimination against "returnees" was rampant. She recalled teachers and students tearing her Japanese clothes if she wore them to school, and being constantly told that she was stupid to wear Japanese clothes.[325]

293. The "returnees" from Japan could afford to eat rice, the preferred staple of Koreans, while most DPRK citizens had to make do with corn and barley. The former residents of Japan remained isolated and interacted mostly with their own community rather than integrating into DPRK society.

294. Despite the relative prosperity of the group, they were seen to be politically suspect because they had come from outside the country, and particularly because they were from Japan, considered the mortal enemy of the DPRK.

- For example, a witness, who had been born in Japan, noted that if a person had an issue with his or her *songbun* status, he or she would not be allowed to travel overseas. In order to visit other countries, a person was obliged to get a signature from the SSD office. However, the SSD officer would not trust a person of low

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[323] See section IV.F.

[324] "Report, Embassy of Hungary in North Korea to the Hungarian Foreign Ministry", 01 August 1960, History and Public Policy Program Digital Archive, MOL, XIX-J-1-j Korea, 5. doboz, 5/ca, 004238/1/1960. Translated for NKIDP by Balazs Szalontai. Available from http://digitalarchive.wilsoncentre.org/document/113409.

[325] Confidential interview and Tokyo Public Hearing, 30 August 2013, morning. TAP001 from Japan said that her family was discriminated against because they were not originally from the village where they now lived. As a child, others used to stay away from her and not play with her, although over time this decreased.

songbun, since the officer would get into trouble if the person failed to return from his or her visit overseas.[326]

- A witness who came from a family of "returnees" said that he and his family were considered to be spies and untrustworthy. No one in his family could aspire to high-ranking positions, no matter how hard they worked. He noted that punishments for "returnees" committing crimes were also disproportionate to those of regular DPRK citizens. While they were forced to bribe officials for everything, very high ranking officials would not accept bribes from them because they were "returnees".[327]

295. Former residents of Japan were for the most part ineligible for mid- or high-level positions within the Party or the military.[328] According to experts and testimony received by the Commission, Koreans from Japan were more at risk of being sent to political prison camps.[329]

- Ms Chiba explained at the Tokyo Public Hearing:

  "In 1970s, speaking in Japanese, singing in Japanese, using Japanese language was also target of punishment, and Mr Yamada talked about Magujabi period, so in '70s and '80s many people did not commit any crime per se, but without any reason many people disappeared. This was something that was quite ordinary that happened in North Korea."[330]

- Another "returnee" told the Commission that, in 1976, his father was sent to a political prison without any warning. The witness continued seeking answers from the Social Safety Agency and SSD about the fate of his father. After several weeks, an officer from the SSD brought his father's file to their house, showing him the charges. His father had apparently defamed Kim Il-sung, when he had said, "In Japan, trains travel at 200 km per hour, here they only go 40 km per hour. It is said that the DPRK will grow beyond Japan, but I doubt it." The witness said that he argued with the officer, saying that the constitution guaranteed freedom of speech, but the officer said freedom of speech did not extend to defamation of the regime. The witness believes his father was sent to Political Prison Camp No. 22. A childhood friend who was also sent to Camp No. 22 reported that his father died in the *kwanliso* in 1978. The family did not receive any notification of his death.[331]

296. When remittances from Japan tapered off in the 1990s, the privileges of Japanese "returnees" also ended.

297. Other DPRK citizens who had been born in the South, or whose parents were born in the South, were also subject to discrimination.[332] This was also the case for people whose family had originated in China, even if ethnically Korean.

- For example, Ms Jo Jinhye testified at the Washington Public Hearing that *"my grandfather actually got married in China and there my dad was born. And they did not come down to North Korea until my dad was eleven years old. So I do not think*

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[326] TAP002.

[327] TSH038.

[328] Andrei Lankov, "Minorities in North Korea, part 1: Japanese-Koreans", *NK News*, 6 August 2013.

[329] TJH026.

[330] Tokyo Public Hearing, 30 August 2013, morning (01:59:57).

[331] TSH036.

[332] TAP012 explained that he and his family were sent to a political prison camp due to his late father's low *songbun*, associated with being politically unreliable. However, a family member who had married into the witness's family had also ended up in the same camp because he had been born in South Korea despite having joined the North Korean military.

my family was part of a very high or good class in North Korea." Her father had been a miner.[333]

298. Among those who suffered the most extreme discrimination were South Korean prisoners of war (POWs) retained in the DPRK after the armistice.[334]

- Mr Yoo Young-bok, a former POW who fled the DPRK and returned to the ROK, explained at the Seoul Public Hearing:

  "*Because we were POWs, we were discriminated against. They were looking down on us. Although we married North Korean women, our children were controlled, our children were kept under surveillance. They did not really give us good jobs; there were just no opportunities to make better lives for our children.*"[335]

- Another former POW from South Korea worked in a coal mine in North Hamgyong Province for 40 years. He told the Commission that about a quarter of the miners were POWs and were under particularly strict surveillance by the Ministry of Public Security and the State Security Department. The witness was regularly interrogated and his interrogators seemed to know many details about his life. He married and had three sons and two daughters. His sons were neither allowed to join the army nor go to university, and one asked him "*Why are we even born?*" His daughters were not able to marry a man of good *songbun*, because they were from a POW family. Even his grandsons were denied the opportunity to join the army or to obtain a tertiary education. The witness recalled how a POW friend hung himself because his children complained so bitterly to him about their situation yet he could not do anything about it.[336]

299. Social mobility in the DPRK remains constrained despite the emergence of a private sector resulting from the de facto marketization of the DPRK economy that commenced during the famine and despite the advent of some limited new information technology. However, the role that *songbun* plays in determining a person's opportunities is shifting. One well-known expert claims that the role of *songbun* – "once the single most important factor that determined the life of a North Korean" – is being displaced by wealth: "North Korean society has become defined by one's relationship to money, not by one's relationship to the bureaucracy or one's inherited caste status."[337] By most accounts, *songbun* still matters today, particularly at the very top and very bottom ends of the

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[333] Washington Public Hearing, 30 October 2103 (00:20:00). Also, witness Mr J was born in Yangbian, China. His father had been born in North Korea, and moved to China during the 1930s. As his father was an intellectual, the family became endangered during the Cultural Revolution, and they moved back to the DPRK in 1960. Mr J described being excluded from mainstream life in the DPRK because was he born abroad. He experienced discrimination in various ways including being sent to live far from any cities in North Hamgyong province where Korean POWs and other immigrants were settled. At school, he had been subjected to severe bullying for his accented speech and for wearing clothes from China. Despite being very good at gymnastics and getting selected by teachers for special training, only the children of party officials would be selected for competitions. Mr J was first assigned to work in a gold mine. He worked hard, and was promoted to leader of in a small work unit. His direct supervisor (a party member) also from the same village encouraged him to join the party, writing a recommendation for him. Mr J studied hard for the party tests, and applied twice, but was refused both times. He was later told by the supervisor that had recommended him that his application was excluded because under Kim Il-sung's order, foreign-born nationals could not join the party (TSH049). Also TBG017.

[334] TBG008.

[335] Seoul Public Hearing, 23 August 2013, afternoon (00:18:35).

[336] TJH029.

[337] Andrei Lankov, "North Korea's new class system", *Asia Times*, 3 December 2011. Also, ECC010.

hierarchies. However, *songbun* now appears to be only one factor that figures into the calculus of access to services or opportunities in a changing society where corruption has seeped into almost every facet of life.[338]

2. Discrimination against women

300. The DPRK acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on February 27, 2001. In its first report to the CEDAW Committee in 2005, it reported:

> In the course of a number of social revolution and development for more than half a century up to now, the content of and the guarantees for sex equality have ceaselessly been developed and enriched. Equality between men and women has been realized in such a degree that the word "discrimination against women" sounds unfamiliar to people now. Sex equality being not confined by simpie equality, the policies and legislation of the state reflect the concept of attaching more importance to women, and their enforcement is now a natural ethical obligation and a life tone of the whole society going beyond the limit of legal obligation.[339]

301. Korean society is deeply embedded with Confucian values.[340] Traditional Confucian ideology ties a women's 'virtue' to how well she obeys her father in her youth, her husband in marriage and her son upon her husband's death. Pursuant to Confucian ideals, a woman's marriage was arranged for her, and upon marriage she became part of her husband's family and an outsider to her own.[341]

302. Kim Il-sung is reported to have commended women's participation in the liberation movement, noting that "the women were completely on an equal footing with men; they all received revolutionary assignments suited to their abilities and aptitudes and carried them out".[342] However, women's participation in the independence movement did not affect their status in post-liberation society.

303. The DPRK commenced on a progressive sex equality platform. Kim Il-sung sought to improve equality between the sexes through the implementation of the Law on Sex Equality, announced on 30 July 1946. This law emphasized equal rights in all spheres, free marriage and divorce, and equal rights to inherit property and to share property in the case of divorce. It prohibited arranged marriages, polygamy, concubinage, the buying and selling of women, prostitution, and the professional entertainer system.[343]

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[338] According to Transparency International's 2013 Corruption Perceptions Index, the DPRK along with Afghanistan and Somalia were the worst performers, scoring just 8 points each and tying for last place at 175th. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country's rank indicates its position relative to the other countries and territories included in the index.

[339] CEDAW/C/PRK/1, para. 72.

[340] See section III.

[341] Park Kyung-ae, "Women and Social Change in South and North Korea: Marxist and Liberal Perspectives", Women and International Development, Working Paper No. 231, Michigan State University, June 1992, p. 2.

[342] Yu Eui-young, *Kim Il Sung Works* (Pyongyang, Foreign Language Publishing House, 1980), p. 185 as cited in Park Kyung-ae, "Women and Social Change in South and North Korea: Marxist and Liberal Perspectives", p. 2.

[343] Park Kyung-ae, "Women and Revolution in North Korea", *Pacific Affairs*, vol. 65, No. 4 (Winter 1992), p. 533.

304. Recognizing that legislation alone would not liberate women from patriarchy and bring about equality, Kim Il-sung sought to liberate the women of the DPRK by promoting their full integration into the labour force. According to Kim Il-sung, in a liberated Korea, "women … can achieve complete emancipation only if they strive with no less devotion and awareness than men to solve the problems arising on the productive fronts of the factories and countryside".[344] In 1961, at the National Meeting of Mothers, he advised:

> "An important question in Women's Union activities in the past was to wipe out illiteracy and eliminate the feudalistic ideas that oppressed the women. But this work no longer seems to be of major importance in our society. Today, the Women's Union should actively campaign for women's participation in socialist construction and bend its efforts to provide conditions that will allow them to work well."[345]

305. In order to enable women to dedicate themselves fully to the public economy, Kim Il-sung advocated in 1946 that the state should take steps to rear children.[346] To this end, the 1972 Socialist Constitution codified the measures to be taken so that women could take part in public life. These included paid maternity leave, free nurseries and kindergartens, and reduced working time for mothers with young families.[347] The responsibility of the state to bring up children and protect working mothers was further enshrined in the 1976 Law on Nursing and Upbringing of Children and the 1978 Labour Law which provided that women with three of more children would be paid for eight hours but required to work only six. Indeed, state childcare services expanded exponentially under Kim Il-sung. In 1949, there were reportedly 12 nurseries and 116 kindergartens. In 1961, there were 7,600 nurseries and 45,000 kindergartens. By 1976, almost 100 per cent of the 3.5 million children could attend one of the 60,000 nurseries and kindergartens.[348]

306. The pronouncement of legal and social arrangements to achieve equal rights by DPRK leaders was to some degree aimed at abolishing the traditional family structure. The emphasis on liberation of women through labour led to a decline in the economic power of the patriarch, and the "socialization" of childrearing served to break down the traditional family structure. The projection of Kim Il-sung as the father-figure further added to the reconfiguration of society, in which Kim Il-sung was the patriarchal head and DPRK nationals his children. Although the commitment to abolish the feudal family was portrayed as necessary to achieve gender equality, in reality this neither served women's liberation nor the family unit. With women free from their "shackles", they could devote themselves fully to the state (as men were already expected to do). Having children in the care of the state further served to strengthen the leader's position as they could be taught to think of the leader as their father, and pledge their allegiance to him over their own family. This proved to be a key ingredient to maintaining control, as having children under the responsibility of the state from a young age provided for many years of indoctrination.[349] The weakening of familial relationships, coupled with the failed economy and severe food shortages across the country at different points in time, has deeply impacted children. In some cases, this has led to their being institutionalized, abandoned and vulnerable to poor health and abuses against them.[350]

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[344] Ibid, 8.

[345] Ibid, 9.

[346] Ibid, 9.

[347] Socialist Constitution of the Democratic People's Republic of Korea (1972), article 62.

[348] Kim Il-sung, "On Further Developing the Nursing and Upbringing of Children. Speech delivered at the sixth session of the fifth Supreme People's Assembly", 29 April 1976.

[349] See section IV.A.

[350] See section IV.C.

307. During the height of economic activity in the DPRK in the 1960s and 1970s, electrical appliances and "fast food" such as canned food were introduced in an effort to minimize domestic work for women in the larger cities. The state had arguably contracted out women's traditional roles in the home so that they could fully participate in state production, so-called "liberation through labour". Yet, despite women's full participation in public life, their economic status did not equal that of men. Although there is no official information on pay scales, other sources reveal that the structure of income distribution between husband and wife meant a husband's income was always higher than his wife's. The structure also did not engender a culture of equality.[351]

308. Despite implementing laws to improve gender equality, cultural attitudes remained traditional. The extreme militarization of society in the DPRK has encouraged such themes as the protection of Korean women's virtue and the defence of Korean purity against hostile outside forces thereby contributing to ongoing gender discrimination. The only manifestation gender equality was the expectation that women along with men would work in state-sponsored employment. Women's lives at home and work remained subservient to men and unequal. Notwithstanding the provision of childcare services, appliances and other developments aimed at decreasing the domestic workload, women were still overwhelmingly responsible for domestic work. Kim Il-sung's aim of liberating women through labour effectively doubled their burden, as they were now expected to engage in both state employment and domestic work.

309. The double burden faced by women led to the increasing departure of women from the workforce as they married.[352] As the economy deteriorated in the 1990s, women were dismissed from their work positions, as working for the state was considered politically more advanced and thus "men's work". Men were also the focus of surveillance, and the state employment system was a critical element to the surveillance structure.[353] As the economic system collapsed, and women remained outside of state employment, women's energies turned towards survival. The subsequent emergence of private markets largely operated by women saved many families from starvation. However, being outside of state employment, women lost their rights to a state pension and the use of childcare services.[354]

310. Nevertheless, women working in the markets can earn double the monthly salary of a man in one day. In recent years, men often have not been paid at all by their state employers.[355] While DPRK decision-makers did not intend to raise the profile of women through the reversal of their policy to engage women in the labour force, effectively by pushing them out of state employment. this contributed to the rise in their economic power. It is estimated that almost half of DPRK families rely on private trading as their only source of income, and women are the main breadwinners in 80 to 90 per cent of households[356] This has changed dynamics in the family.

311. Despite the economic advancement of women, they are still discriminated against by the state. The state imposed many restrictions on the female-dominated market, including

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[351] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 382-303; Park Kyung-ae, "Women and Social Change in South and North Korea: Marxist and Liberal Perspectives", p. 11.

[352] Stephen Haggard and Marcus Noland, "Gender in Transition: The Case of North Korea", *World Development*, vol. 41 (2012), p. 52.

[353] See section IV.C.

[354] Citizen's Alliance for North Korean Human Rights (NKHR), "Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK", May 2013, p. 31.

[355] Louisa Lim, "Out Of Desperation, North Korean Women Become Breadwinners", *National Public Radio*, 28 December 2012.

[356] Peterson Institute as quoted in Louisa Lim, "Out Of Desperation, North Korean Women Become Breadwinners", *National Public Radio*, 28 December 2012.

prohibiting anyone other than women over forty years of age from trading.[357] Gender discrimination also takes the form of women being targeted to pay bribes or fines. In a recent study conducted with North Koreans who have left the DPRK, 95 per cent of female traders reported having paid bribes. More than one-third of men reported that criminality and corruption is the best way to make money.[358] Regulations in force until 2012 prohibiting women from riding bicycles were reintroduced in January 2013.[359] Public safety officials were reportedly imposing fines equivalent to the cost of 4 kilograms of corn on rural women who were riding bicycles under the prior ban, but are now said to be confiscating the bicycle instead.[360] Losing a day's wage due to a fine or the confiscation of a bicycle seriously hinders a woman's ability to earn an income and feed her family. There is recent evidence that women are beginning to object and resist such impositions.

312. Regulations stipulating that women should wear skirts have also been in place and enforced by the Moral Discipline Corps (groups of citizens mobilized to crack down on what are referred to as morality violations). Recent evidence suggests such restrictions were eased in Pyongyang but may still be in place in less urban areas.[361] Furthermore, the Youth League and Women's Union have tasked themselves with 'educating' girls and women on proper attire.

- A witness told the Commission:

> *"Women in North Korea are not allowed to wear tight pants and jeans. Women should preferably wear skirts and black shoes according to the socialist lifestyle. Married women can wear jeans. In summer they cannot wear sandals with jewels. I learnt the rules on restrictions for women at the Youth League. If women do not respect the restrictions they can be sent for one month to the dalyundae [labour-training corps]."*[362]

- Another witness explained why these types of regulations have been created:

> *"Kim Jong-il's orders are usually turned into law. If there is something that he does not like, the People's Safety Ministry devises a plan and once they have a plan, Kim Jong Il signed it and it becomes law. In order to follow the instructions, the SSD and the Ministry try to do everything possible in order to carry out the law decree... they do everything. If Kim Jong Il thinks that girls wear skirts that are too short or have too long hair, the inspection group starts to work on the issue (to create a law). There are so many decrees forbidding women from cycling and from wearing pants."*[363]

313. In the 2005, the Committee on the Elimination of Discrimination against Women requested that the DPRK define discrimination against women in line with the Convention, and undertake measures and policies to eliminate discrimination against women.[364] In response to those requests, in December 2010, the DPRK enacted a Women's Rights Act, the first legislation specifically aimed at gender issues since the 1948 Gender Equality Law.

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[357] TAP007.

[358] Stephen Haggard and Marcus Noland, "Gender in Transition", pp. 51-66.

[359] "Women on bicycles banned again", *Daily NK*, 14 January 2013. Available from http://www.dailynk.com/english/read.php?cataId=nk01500&num=10231.

[360] Ibid; Citizens' Alliance for North Korean Human Rights, "Flowers, Guns and Women on Bikes: Briefing Report on the Situation of Women's Rights in the DPRK", 2009, p. 17.

[361] These restrictions are said to have been repealed in July 2013, however expert evidence suggests the restrictions are still in force outside of Pyongyang.

[362] TLC042.

[363] TLC013.

[364] CEDAW/C/PRK/CO/1.

According to the nongovernmental organization Citizens Alliance on North Korean Human Rights:

> "[t]he Women's Act was merely a façade created during North Korea's [United Nations] human rights review when it faced international pressure… the North Korean state has recently been trying to reinforce through ideological education the traditional role women in a patriarchal society."[365]

314. In the political sphere, women remain discriminated against despite the early reforms. Women make up just 5 per cent of the Worker's Party of Korea Central Committee Members and Candidate Members,[366] and 10 per cent of central government employees.[367]

315. In the home, while women remain subservient to men, women's economic progress is having an impact. Men, who have also become creative at making money through non-state sanctioned enterprise, are reticent to work in the market as they are not permitted to by the state (having to remain officially in the employ of a state position) and because the market is considered 'a women's area'.[368]

- A former trader told the Commission that some men sold bicycles in the market but for the most part "*women were more numerous because men had their careers*".[369]
- One witness whose wife traded in the market, explained that he did not engage in the market because it was "*embarrassing*". He told the Commission that he also heard "*rumours that men who engaged in the black market get punished. From 2002-03, more men have worked in the markets, but there is still a stigma attached to it. Men are expected to work in the official jobs.*"[370]

316. As a consequence of the disproportionate representation of women in the markets, most household income is generated by women, which has led to a perceived disempowerment of men. Some women are allegedly calling their husbands "puppies" because they have to be fed, yet they do not contribute to the economy of the household. The additional financial burden women are bearing is coupled with additional burdens at home due to the lack of electricity and/ or running water in some homes caused by breakdown of state services.[371] The extra burdens women carry has begun to have social consequences. Younger women are hoping to delay marriage to avoid taking on a husband, and domestic violence is increasing as many men are unable to cope with the changing gender roles.[372]

317. Witness testimony revels that domestic violence is rife within DPRK society, and victims are not afforded protection from the state, support services or recourse to justice.[373]

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[365] Citizen's Alliance for North Korean Human Rights, "Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK", p. 16.

[366] KINU, "Study on the Power Elite of the Kim Jong Un Regime", (2013), p. 24..

[367] Won-woong Lee, "An Observer Report on the UN Human Rights Committee's Review Session on North Korea's Second Periodic Report on Human Rights" as cited in KINU, *White Paper on Human Rights in North Korea* (2013), p. 381.

[368] TAP007, TBG030 and TSH052.

[369] TBG030.

[370] TSH052.

[371] Lim Soon-hee, "The Food Crisis and the Changing Roles and Attitudes of North Korean Women", KINU, 2005, p. 14.

[372] Louisa Lim, "Out Of Desperation, North Korean Women Become Breadwinners", *National Public Radio*, 28 December 2012.

[373] TAP007, TSH020, TSH055, TLC042, TBG028.

- One witness testified before the Commission:

> *"Domestic violence is quite common. There is no law on this: family issues stay within the family. Even if a woman complains, the police will not interfere in family business."*[374]

- Similar sentiments were heard by the Commission from another witness:

> *"[Violence against women] is considered a family matter. Only if the person is seriously injured then it becomes public. It is frequent. There is no place to complain. It can be used as a cause of divorce. Nothing is done to the husband even if the woman is severely beaten."*[375]

318. Witnesses have testified that violence against women is not limited to the home, and that it is common to see women being beaten and sexually assaulted in public.[376] Officials are not only increasingly engaging in corruption in order to support their low or non-existent salaries, they are also exacting penalties and punishment in the form of sexual abuse and violence as there is no fear of punishment.[377] As more women assume the responsibility for feeding their families due to the dire economic and food situation, more women are traversing through and lingering in public spaces, selling and transporting their goods. The male dominated state, agents who police the marketplace, inspectors on trains and soldiers are increasingly committing acts of sexual assault on women in public spaces. The Commission received testimony that while rape of minors is severely punished in the DPRK, the rape of adults is not really considered a crime.[378] The Commission also received reports of train guards frisking women as they travel through the cars, and abusing young girls onboard.[379] One witness told the Commission:

> *"Women were frisked as they entered the station [to check they were not carrying items for sale], I think this is how the sexual violence started happening. Guards also take young girls on the train for sexual acts, including rape. Everyone knows this is happening, it is an open secret."*[380]

319. Such behavior has been observed as "the increasingly male-dominated state preying on the increasingly female-dominated market".[381] Sexual assaults of women within the military have become frequent.[382] A former military officer explained:

> *"There were a lot of cases of sexual abuse and rape committed often by senior officers. Normal soldiers would also engage in rape, exacerbated by the fact that these young men were denied the right to have any sexual relations while serving in the army. The rapes were typically covered up, although male comrades would talk about them and some even bragged. It was common knowledge that rapes were taking place."*[383]

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[374] TBG030.

[375] TBG028.

[376] TSH020, TSH008, TLC042.

[377] Citizen's Alliance for North Korean Human Rights, "Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK", p. 29.

[378] TLC042.

[379] TSH008.

[380] TSH020.

[381] Stephen Haggard and Marcus Noland, "Gender in Transition", p. 51.

[382] KINU, *White Paper on Human Rights in North Korea* (2013), p. 395.

[383] TJH044.

320. Reports also suggest that sexual abuse takes place in the process of single women seeking membership to the Workers' Party of Korea or better positions in the workplace.[384] The Commission finds that sexual and gender-based violence against women is prevalent throughout all areas of society. Transactional sex and prostitution are also rife within the DPRK as women voluntarily submit to men for food, money, travel or to avoid a fine or other punishment. These activities, driven by the need for survival by vulnerable persons, are the consequence of the structural problem of food shortage and gender discrimination.[385] Such structural problems are also major contributing factors to the high levels of trafficking in women and girls.[386] In this regard, the Commission notes the particularly difficult position of younger women, with little opportunity for state employment or advancement in the public sector, and prohibited from engaging in the private market due to the age restriction of only women 40 years and over being allowed to trade.

3. Discrimination against persons with disabilities

321. According to the United Nations, around 10 per cent of the world's population lives with a disability.[387] The World Health Organization notes that the DPRK has estimated that 3.4 per cent of its population have a disability according to 2007 data, or about 790,000 people.[388]

322. In July 2013, the DPRK signed the Convention on the Rights of Persons with Disabilities, although it has yet to ratify it. The Korean Law for Persons with Disabilities was passed in 2003 promising free medical care and special education for persons with disabilities. According to the DPRK's state report to the Universal Periodic Review in 2009, the law was adopted

> "with a view to protecting the rights of persons with disabilities satisfactorily. They receive education and medical treatment, choose their occupation according to their talents and abilities, and enjoy cultural life with equal rights with others...while children with other disabilities are included in the mainstream classes. Disabled soldiers' factories and welfare service centres were set up for the purpose of creating jobs for the persons with disabilities, tonic medicine and walking aid devices are provided free and paid vacation and allowances are provided to them."[389]

323. According to witnesses, North Koreans do not openly discuss disability and impairment, and there is widespread prejudice against people with disabilities.

- Mr Ji Seong-ho, who lost limbs in a train accident, testified in the Seoul Public Hearing before the Commission:

  "In North Korea, we call people with disabilities, the crippled, or people with a lot shortcomings or they use a derogative term to refer to the specific part of their body

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[384] Lim Soon-hee, "The Food Crisis and the Changing Roles and Attitudes of North Korean Women" (2005), p. 22.

[385] See section IV.D.

[386] See section IV.C.

[387] United Nations Enable, official website of the United Nations Convention on the Rights of Persons with Disabilities, "factsheet 2013".

[388] World Health Organization, "Disability in the South-East Asia Region", 2013. According to Kim Mun-chol, Deputy Chairman of the Chosun Disabled League Central Committee, who led the North Korean sports delegation to the 14th Paralymics in London in 2012, the total number of persons with disabilities in the DPRK is 5.8 per cent of the population. KINU, *White Paper on Human Rights in North Korea* (2013), p. 440.

[389] A/HRC/WG.6/6/PRK/1, para. 74.

> *that is disabled. For example, if you don't have a hand, or missing a wrist like me, then they would refer to it as a gravel hand. They have derogative terms for blind people, for people who have hearing disabilities. And even instead of names, even to refer to my family, they refer to my family as the family of the gravel hand. So that's [the] kind of the prejudice that we encountered.*"[390]

324. The government in 1998 established the Korean Federation for the Protection of Disabled People, closely modelled on the China Disabled Persons' Federation. The Federation, established through a cabinet resolution, is intended to be a civil society organization representing people with disabilities and addressing their needs. The Federation developed a partnership with an international non-governmental organization by signing a long term memorandum of understanding in 2001. Together they have implemented projects in the areas of physical rehabilitation and education for children with sensory disabilities.

325. It is believed that, in 1959, the government built 11 special boarding schools for hearing-impaired children and vision-impaired children. There do not appear to be any schools or systems for the educational integration or inclusion of children with intellectual or multiple impairments.

326. While acknowledging the legal rights of persons with disabilities appears to be a positive step in addressing the human rights concerns of this vulnerable population, reliable information about this population is scant. Witnesses have reported systematic discrimination against people with disabilities, whereby families of babies with disabilities have been banished from Pyongyang and forced to relocate in rural areas where there are no services for them, in addition to generally harsher living conditions.[391] According to a former high-level official interviewed by the Commission, the Ministry of Public Security was responsible for cases of children with disabilities. He said that the public security officers visited families to discourage them from keeping their children with disabilities. If they were residents of Pyongyang and insisted on keeping their children, the families would have to leave the capital. If the family agreed to be separated from the child, however, the child would be taken by the government to a designated location. The family would have to sign documentation to agree never to seek that child again and the name of the child would be deleted from the Family Registration File as if the child with disabilities never existed.[392]

To what extent this policy is still in practice is questionable as there have been recent reports that people with disabilities are permitted to reside in Pyongyang.[393] This may be an indication that this policy may have been abandoned or not pursued as strictly as in the past. This is may reflect preparations by the DPRK to accede to the Convention on the Rights of Persons with Disabilities following its signature in July 2013. Nevertheless, if the allegation regarding the deletion of a child with disabilities from the family registry was true, the Commission notes this would amount to a violation of articles 7 and 8 of the CRC.

- Nevertheless, Mr Kim Soo-am of the Korea Institute for National Unification explained to the Commission that "*there is still a high level of discrimination*

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[390] Seoul Public Hearing, 22 August 2013, morning (01:36:00). Mr Ji lost his left hand and part of his lower leg after falling from train and being run over by it. After the incident he had trouble accessing coal for food and went to China to find food. Upon his return, he was arrested and held for bringing shame to the DPRK for going to China as a disabled person. He left the DPRK in 2006.

[391] TAP007, TAP011.

[392] TCC014.

[393] EBG002, TBG026.

> *against people with disabilities. In regions where they get a lot of foreign visitors, they limit the residence of people with disabilities.*"[394]

327. According to a recent NGO report, many DPRK nationals who fled the DPRK indicated that infants with disabilities were killed or abandoned.[395] Another research institute based in the ROK reported that human rights violations against persons with disabilities include the segregation and forced sterilization of persons suffering from dwarfism.[396]

328. There have been disturbing allegations of an island in South Hamgyong Province where gruesome medical testing of biological and chemical weapons has been conducted on persons with disabilities. The Commission has received no first-hand accounts of these allegations. A former high-level official, recounted two occasions when he was working for the Ministry of Public Security when people were arrested and sent to a facility, Hospital 83, where the doctors told him they would be used for medical experiments.[397] Based on the information received, the Commission is not in a position to confirm these allegations. It notes them as subjects for further investigation.[398]

329. In addition to progress on the legal front, the rights of persons with disabilities have received positive attention on a government policy level. Diplomatic sources note that the Korean Federation for the Protection of the Disabled People has made the International Day of People with Disability a national event. One North Korean athlete participated in the 2012 Paralympics.[399] In its 2009 UPR report, the DPRK noted that the annual day of persons with disabilities "serve[s] as an important occasion in facilitating their integration into society and encouraging the general public to respect the dignity and worth of the persons with disabilities and render them support."[400]

4. Impact of discrimination on economic, social and cultural rights

330. Discrimination results in unequal access to basic human rights including food, education, health care and the right to work. The Commission finds that the *Songbun* system leads to structural discrimination whereby generations become locked into disadvantage and social mobility is not possible. The Commission considers that discrimination on the basis of *songbun*, gender and ability has created many vulnerable groups. The effects of discrimination on the enjoyment of economic, social and cultural rights appear to vary across time and locations. According to diplomatic sources, discrimination is worst in the countryside.[401]

331. Pyongyang is a city for the core class, with better infrastructure and services than elsewhere in the country. Residency in Pyongyang is considered a privilege, and one that has been revoked.[402]

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[394] Seoul Public Hearing, 21 August 2013, afternoon (02:34:00).

[395] Citizens Alliance on North Korean Human Rights, "Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK".

[396] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 442-444.

[397] TJH004. A former State Security Department official reported rumors of these islands (TJH041). Also, see Citizens Alliance on North Korean Human Rights, "Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK".

[398] On alleged medical experiments, see also section IV.E.6.

[399] Submission to the Commission: SUB060. Also,"North Korea's first Paralympian inspires the disabled", *Associated Press*, 28 August 2012.

[400] A/HRC/WG.6/6/PRK/1.

[401] SUB060.

[402] TJH041.

- One witness who spoke to the Commission was born in Pyongyang, but after her father was executed in the mid-1950s under suspicions of having been a collaborator with the South during the Korean War, she and the rest of the family were expelled to the North Hamgyong Province because of their low *songbun*.[403]

332. Many of the Koreans who came to the DPRK from Japan were not allowed to reside in Pyongyang or other cities.

- Ms Chiba explained to the Commission: *"[A]mong the 93,000 people – people were classified into different ranks and classes, and depending on the classes people were sent to mountains. Many Japanese people were sent to mountains, they were not able to live in cities."*[404]

333. The effects of food shortages are felt more keenly by more vulnerable populations, which was particularly the case during the famine of the 1990s. The public distribution system, which allocated all legal rations of cereals, determined people's entitlements to food on the basis of their age or professional status. Another dimension of the famine was the geographic variance in availability of food. Pyongyang and the surrounding areas where most of the elite resided fared better than more remote areas, particularly the industrial northeastern region of the country.[405]

334. Although the Socialist Labor Law guarantees the right to choose one's profession, in practice the state plays a predominant role in determining a citizen's employment.

- For example, a prisoner of war from the ROK, was re-educated and then married a DPRK woman with low *songbun*. He had two sons. One died but his other son was not allowed to join the military or to go to university. He reported to the Commission that children of miners become miners and go to mining vocational school.[406]

335. For university graduates, the Bureau of Staff of the regional committee of the Korean Workers' Party determines who gets placed in a managerial or technical post. In some cases, the Party's Central Bureau of Staff must be consulted and the Secretariat must sign off. Factors that are considered include *songbun*, gender, physical ability, academic qualifications and other lifestyle matters.[407]

336. For high school graduates and discharged soldiers, the Labor Department of the regional People's Committee determines work assignments. For manual labor jobs such as mining, road and railroad construction, group allocations are made. In 2003, the Committee on Economic, Social and Cultural Rights expressed concern "that the right to work may not be fully assured in the [DPRK's] present system of compulsory state-allocated employment, which is contrary to the right of the individual to freely choose his/her career or his/her workplace."[408]

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[403] TGC001.

[404] Tokyo Public Hearing, 30 August 2013, morning (02:04:41).

[405] For more detail on the impact of discrimination on access to food, see section IV.D.

[406] TSH051 explained that people with low *songbun* cannot go to teachers college because they would be influencing children, but they can go to technical colleges which include medical school.

[407] TBG015.

[408] E/C.12/1/Add.95.

337. Discrimination impacts not only the designation of profession but also professional development and advancement. *Songbun* has also been a limiting factor for DPRK nationals who seek to progress in their careers.[409]

- For example, Mr Jang hae-sung, a former DPRK journalist, testified at the Seoul Public Hearing:

  "I am a person of good songbun, good class in North Korea. My grandfather was also involved in anti-Japanese activities. And two of my father's siblings died during the Korean War so I was one of those really privileged, high class, high songbun. But I'm from China, but if I was not born in China, if I was born in North Korea, then I could have been able to work in the core institutions, but because I was born in China, I was not able to work [for the] BoAnBu or Bowibu [MPS or SSD]. That is why I had to work in the press."[410]

338. Military service is compulsory for all males in the DPRK, but those with low *songbun* or a disability are not able to serve. In the past, citizens wished to serve in the military for career purposes. However, since the 1990s, the military has been less attractive due to the risk of malnutrition, and many people actually attempt to escape conscription at great risk. Nevertheless, military service is a key way for securing a position as an official. Most citizens enter the military for 10 to 13 years, although children of high-ranking officials appear to only need to serve for three years before they are eligible for Party membership or enrolment into university. According to first-hand information received by the Commission, professional advancement for officials requires four credentials: military service, membership of the Workers' Party of Korea, university qualification and high *songbun*. Without all four qualifications, an individual would have limited chances of becoming a high-ranking official whether in the party, military or government. These qualifications are particularly important for jobs in the security bureau, foreign service and economic bureau.[411]

339. In 2012, the Supreme People's Assembly extended compulsory education to 12 years from 11 years, promised more classrooms and said that teachers would be given priority in the distribution of food and fuel rations, according to the DPRK's official Korean Central News Agency.[412] Despite the DPRK's commitment to universal provision of education,[413] access is hindered for some by systemic discrimination. Because of the collapse of the DPRK economy, students are generally required to provide resources to fund teachers and school operations.[414]

- Mr Charles Jenkins, who lived in the DPRK for over 39 years, told of goods that his two daughters were asked to bring to school: *"[T]he girls were always coming to me saying that school officials had requested a certain amount of supplies from every student's family. Sometimes they would say their teachers told them they needed to bring in 2 kilograms of brass each by Monday. Or a kilogram of lead. Or a hundred meters of copper wire. They asked for coal, gasoline, even rabbit skins."* These specific requests were in addition to the 60 kilograms of corn that he had to send every month to the school. *"That's 2.2 pounds per daughter every day, even*

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[409] According to TAP001, most people who came from Japan were highly-educated and able to get jobs but would still not get high level positions.

[410] Seoul Public Hearing, 22 August 2013, afternoon (00:46:31).

[411] TAP011, TLC007.

[412] Choe Sang-hun, "North Korea's Leaders Promise Improvements to Educational System", *New York Times*, 25 September 2012.

[413] CRC/C/PRK/4, paras. 174-176; A/HRC/WG.6/6/PRK/1, para. 59.

[414] TBG030.

> *though a student's ration is only a pound per day, so you can see that someone, somewhere, was skimming more than half of what we sent."* He also noted that his daughters were attending the Foreign Language College, "*supposedly a high-class place where the country's elite were being educated*".[415]

340. The Commission believes that if these practices prevailed in elite schools, those attending less privileged institutions may be subjected to similar requests to provide subsides that their families may not be able to afford.

341. In addition, it appears that privileges in school – such as whether a student can be designated head of class – are also determined by *songbun*.[416] Furthermore, compulsory education does not apply to children sent to political prison camps, where an elementary level of instruction is administered under a different curriculum.[417]

342. Where discrimination in education becomes most apparent is in the selection process for universities or the opportunity to even take the entrance examination. Numerous testimonies of witnesses interviewed by the Commission reported that those persons with low *songbun* were not even allowed to take the entrance exam or were not allowed to attend institutions appropriate to their level of academic performance and test scores.[418]

- A witness told the Commission that, due to her hostile *songbun*, she was prevented from returning to Pyongyang where she was born. She was also rejected by the university where she had applied to study dance and instead was sent to work in agricultural projects.[419]

343. Given the outsized role in determining one's future, *songbun* also affects people's opportunities for marriage.[420] One prominent example is Ms Jang Kum-song, whose mother is Ms Kim Kyong-hui (the sister of Kim Jong-il) and whose father is the now-deceased Mr Jang Song-thaek. Ms Jang died in Paris in 2006, aged 26, as a result of suicide. Educated in Europe, she reportedly wished to marry a particular DPRK man but her parents opposed the union due to the difference in *songbun*.

344. The most vulnerable groups—persons of low *songbun*, women, children and persons with disabilities—are particularly disadvantaged in their access to health services and medicine. The state purports to provide free access to medical services for all citizens while providing special protection for special groups such as "revolutionary fighters, families of revolutionary martyr soldiers, families of patriotic martyr soldiers, families of North Korean People's Army soldiers, and awarded soldiers".[421] In reality, however, while

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[415] Charles Robert Jenkins with Jim Frederick, *The Reluctant Communist, My Desertion, Court-Martial, and Forty-year Imprisonment in North Korea* (Berkeley, University of California Press, 2008), pp. 129, 134-135; TSH054.

[416] TBG024.

[417] KINU, *White Paper on Human Rights in North Korea* (2012), p. 364; Kang Chol-hwan in his book, *The Aquariums of Pyongyang*, (New York, Basic Books, 2001), pp. 63-78, details the change in schooling when he was sent to a political prison camp at the age of nine.

[418] TJH026, TAP008.

[419] TGC001.

[420] TSH051 explained that because of her *songbun*, no one would approach her to get married. A military doctor from Pyongyang came to see her on an arranged blind date and after several dates they were supposed to get engaged, but the engagement was called off when he found out about her *songbun*. It was a very embarrassing time, with the witness thinking that she was never going to be married. In the DPRK, *songbun* comes first, the witness said.

[421] DPRK Constitution, articles 56 and 72.

patients may access hospitals for free, medical equipment and medication are unavailable to the masses and must be bought on the private market by those who can afford them.[422]

- A former nurse at a county hospital in North Hamgyong Province, the northernmost region of the country to which many of lower *songbun* have been banished, told the Commission: *"Working conditions were difficult. There was always a shortage of medicine. It was distributed from high levels at the national level down to the county, and misappropriated by officials who sold it on the black market [for money]. Consequently, doctors did not have medicines to use and could only write prescriptions. A more alarming side-effect of the misappropriation of medicines was the sale of dangerous 'knock-offs' that flooded the markets. Entrepreneurs mixed liquid antibiotics with fuel and mixed pills with flour to make more money. As a result, many people presented to hospital with infections and problems from using knock-off antibiotics. It was well known in the medical profession that bottles, lids and labels from the Suncheon factory for antibiotics were regularly stolen for the containment and sale of knock-off antibiotics. Although patients can technically go to the hospital at any time of day, the staff are rarely there after lunch as they had to engage in other business to make money to feed their families, or shop and do household chores"*.

  The witness further explained that the dire situation in regional hospitals is known to party officials: *"Party staff carry out nominal inspections of the hospitals each year. They are fully aware of the deficiencies of the hospital and the health situation of the community, but are bribed by the head of the hospital not to report the conditions. Staff are also expected to give money so a party could be put on for the visiting officials. Bribery and corruption are the norm in the DPRK. The officials are also the ones siphoning off the supplies, so they are more than aware of the situation. Party officials always given priority in the hospital, treated in separate rooms; they have no interest in how the rest of the population is suffering."*[423]

345. Women are particularly disadvantaged by the lack of access to health care. Tests for female diseases or screening for breast cancer do not exist. A survey recently conducted with women in the ROK originally from the DPRK found that almost half of the women surveyed did not see a doctor throughout their pregnancy and almost half delivered their babies at home regardless of whether they were from a major city or village. Women also reported that the death of the mother or baby during or after childbirth was not uncommon.[424] Maternal mortality rates almost doubled in the decade from 1993 to 2003, largely due to inadequacies in emergency obstetric care.[425] The maternal mortality rate in 2010 was estimated to be 81/100,000 live births.[426]

5. Principal findings of the commission

346. The Democratic People's Republic of Korea has presented itself to the world as a state where equality, non-discrimination and equal rights in all fields have been fully implemented.[427] In reality, the Commission finds that the DPRK is a rigidly stratified

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[422] TSH051, TSH004.

[423] TSH051.

[424] Citizen's Alliance for North Korean Human Rights, "Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK", p. 37.

[425] UNICEF, "2003 Country report", pp. 47-50.

[426] WHO, UNICEF, UNFPA and The World Bank Estimates, "Trends in Maternal Mortality: 1990 to 2010", 2012.

[427] The State report for the DPRK's first Universal Periodic Review in 2009 stated the following: "In the DPRK, equality is fully ensured based on unity and cooperation between persons. No citizen is

society with entrenched patterns of discrimination, although these are being modified to some extent by the transformative socio-economic changes introduced by market forces and technological developments in the past decade. The Commission finds that state-sponsored discrimination in the DPRK is pervasive but shifting. Discrimination is rooted in the *Songbun* system, which classifies people on the basis of social class and birth and also includes consideration of political opinion and religion.[428] *Songbun* intersects with gender based discrimination, which is equally pervasive. Discrimination is also practised on the basis of disability although there are signs that the state may have begun to address this particular issue.

347. The state sponsors and implements a system of official discrimination based on social class, deriving from perceived political loyalty and family background as manifest in the *Songbun* system. The concept of *songbun* was originally conceived as a means to re-engineer the fabric of society, so as to replace the pre-1945 traditional elites with new "revolutionary" elites loyal to the leadership and the new state. In this regard, the DPRK remodeled pre-existing hierarchies in Korean society that were deeply rooted for centuries.[429]

348. The *Songbun* system used to be the most important determining factor in an individual's chances of livelihood, access to education and other services including housing and the opportunity to live in favorable locations, especially the capital Pyongyang. This traditional discrimination under the *Songbun* system has been recently complicated by increasing marketization in the DPRK and the influence of money on people's ability to better access their economic, social and cultural rights. Money and heightened levels of corruption increasingly allow newly emerging business elites and others able to obtain resources to circumvent state-sponsored discrimination. Moreover, new information technologies, including mobile phones, help to facilitate the operation of the market system and the exchange of knowledge and information. However, whether an individual has the necessary access to make money in the most lucrative sectors of commerce is to some degree determined by *songbun*. At the same time, significant segments of the population that have neither the resources nor favorable *songbun* find themselves increasingly marginalized and subject to further patterns of discrimination, as basic public services have collapsed or now require payment.

349. Discrimination based on *songbun* continues to articulate itself today through the stark differences in living conditions between larger cities, in particular the capital Pyongyang, where the elites of the highest *songbun* are concentrated, and the remote provinces, to which people of low *songbun* were historically assigned. Discrimination remains a major means for the leadership to maintain control against perceived threats, both internal and external.

350. Early reforms aimed at ensuring formal legal equality have not resulted in gender equality. Discrimination against women remains pervasive in all aspects of society. Arguably, it is increasing as the male-dominated state preys on both the economically advancing women and marginalized women. Many women, driven by survival during the famine in the 1990s began operating private markets. However, the state imposed many restrictions on the female-dominated market, including prohibiting anyone other than women over forty years of age from trading. Gender discrimination also takes the form of

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discriminated on the basis of his/her race, sex, language, religion, education, occupation and position and property, and all citizens exercise equal rights in all fields of the state and public activities" (A/HRC/WG.6/6/PRK/1, para. 32).

[428] Discrimination on the basis of religion is addressed in section IV.A.

[429] See section III.

women being targeted to pay bribes or fines. There is recent evidence that women are beginning to object and resist such impositions.

351. The economic advances of women have not been matched with social and political advancements. Entrenched traditional patriarchal attitudes and violence against women in the Democratic People's Republic of Korea persist. The state has imposed blatantly discriminatory restrictions on women in an attempt to maintain the gender stereotype of the pure and innocent Korean woman. Sexual and gender-based violence against women is prevalent throughout all areas of society. Victims are not afforded protection from the state, support services or recourse to justice. In the political sphere, women make up just 5 per cent of the top political cadre, and 10 per cent only of central government employees.

352. Discrimination against women also intersects with a number of other human rights violations, placing women in positions of vulnerability. Violations of the right to food and freedom of movement have resulted in women and girls becoming vulnerable to trafficking and increased engagement in transactional sex and prostitution.430 The complete denial of the freedoms of expression and association outside state-approved organizations has been a large contributing factor to the generally unequal status of women vis-à-vis men. Among other things, these limitations have prevented women from collectively advocating for their rights, as women have done elsewhere in the world.

353. Despite Kim Il-sung embrace of Marxist-Leninist theory and the DPRK participation in the Socialist International, the DPRK diverged from those ideals in its propagation of the notion of a pure Korean race that had to be kept clean and untainted by external influences. This construct flows from the general resistance to foreign influences and inward focus emphasized by *Juche* ideology.[431] This deliberate withdrawal from the rest of the world bolstered the rationale for control by Kim Il-sung. The DPRK's inward focus was one aspect of *Juche* ideology. Its other main element was the ever expanding cult of personality of Kim Il-sung.[432] While justifying isolationist policies and elevating Kim Il-sung (and subsequently his heirs) to the supreme father-figure who could protect the nation from the hostile outside world, *Juche* ideology has had dire repercussions for persons seen as sullying the image of an untainted DPRK. Women and persons with disabilities experience particular discrimination, although the state has reportedly taken positive steps lately to improve its approach towards the latter group.

354. While discrimination exists to some extent in all societies, the Commission finds that the Democratic People's Republic of Korea has practised a form of official discrimination that has had a very great impact on individuals' enjoyment of human rights. Given the exceptional levels of state control, this official discrimination influences most aspects of people's lives. Discrimination remains a major means for the leadership to maintain control against perceived threats, both internal and external.

C. Violations of the freedom of movement and residence, including the right to leave one's own country and the prohibition of refoulement

355. In considering the right to freedom of movement, the Commission looked particularly at article 12 of the International Covenant on Civil and Political Rights (ICCPR) which provides, among others, for the right to liberty of movement and freedom to choose one's residence; freedom to leave any country including one's own; and the right

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[430] See section IV.C.

[431] For more on *Juche*, see section III.

[432] For more on Kim Il-sung's cult of personality, see section IV.A.

not to be arbitrarily deprived of the right to enter one's own country. As DPRK nationals are assigned their employment by the state which therefore dictates where they reside, the Commission also considered article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides for the right to work. This includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts.

356. The Commission further looked at the General Comments of the Human Rights Committee to article 12 of ICCPR especially in respect of permissible legal restrictions on these rights necessary to protect national security, public order or morals or the rights and freedoms of others and consistent with the other rights recognized by ICCPR. The Commission also took into account article 10 of the Convention on the Rights of the Child which provides for the right of the child with his or her parents to leave any country, including their own, and to enter their own country.

1. Freedom of movement and residence in the Democratic People's Republic of Korea

357. The Commission finds that the authorities in the DPRK severely restrict its citizens' (as well as foreigners') right to freedom of movement and residence within the country. This policy is designed to limit information flows and to uphold discrepancies in living conditions that favour elites in Pyongyang and discriminate against people of low *songbun* who are concentrated, as a consequence, in more remote provinces.

(a) State-assigned place of residence and employment

358. According to the DPRK's submission to the Human Rights Committee, while citizens and foreigners are free to choose and move their residence, they are required "to go through due legal procedures when they want to move residence".[433] These procedures are laid out in the Law on Registration of Citizens for DPRK nationals and Chapter 4 (Stay, Residence and Tour of Foreigners) of the Immigration Law for foreigners.

359. Article 70 of the DPRK Constitution provides for the right of the people to choose their employment according to their desire and capability. In practice, citizens are assigned their place of residence largely based on where they are assigned to work by the state. The Workers' Party of Korea has full and exclusive control over all job assignments for the people. People are assigned their jobs in groups to work in factories, mines and construction facilities as the Party deems necessary.[434]

360. By law, people are also not allowed to move from their assigned residence to another residence without government permission. Article 149 of the Criminal Code provides that anyone who hands over, receives or lends a dwelling place owned by the state for money or goods shall be punished by short-term labour for less than two years.[435] Since all immovable property is state-owned, this provision effectively criminalizes any unauthorized move. According to testimony received by the Commission, corrupt officials are easily bribed to look the other way when people illegally sell their residency rights to another person.

- One witness informed the Commission that no one is free to choose where they live as the Party allocates where they may live. His parents' generation were allocated houses and he personally never saw anyone moving homes. However, as the market economy spread as a result of the food crisis, it became possible to "buy" state-owned houses. His parents-in-law were able to buy a second floor apartment for him and his wife but the housing official needed to be bribed in order to have the transfer of residence registered.[436]

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[433] CCPR/C/PRK/2000/2, para. 77.

[434] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 355-356.

[435] 2009 Criminal Code of the DPRK as translated by Citizens' Alliance for North Korean Human Rights.

361. In the determination of one's place of work and residence by the state, one's *songbun* social classification plays a key role.[437] As the Commission heard at the Seoul Public Hearing, people who are not politically reliable are forcefully moved to places that are difficult to live in, such as mining and farming areas.[438] Children of those assigned to menial jobs in marginalized areas are usually assigned to the same work and place to live.

362. During the purges in the early decades of the DPRK's history, large numbers of people, who were considered to be of low *songbun* but escaped the political prison camps, were forcibly relocated to more remote areas and reassigned to arduous labour in farming or mining. As a result, provinces such as North and South Hamgyong today have a much higher concentration of people of low *songbun* than other areas, especially Pyongyang where mainly only people of good *songbun* are allowed to live. According to one submission received by the Commission, following the reclassification of DPRK citizens into 51 sub-categories under the 3 classes of *songbun*, 70,000 people from 15,000 families who were classified as belonging to the hostile class were banished to remote mountainous areas. "*Many of the areas they were banished to became prison camps.*"[439]

363. The Commission heard from witnesses who spoke about being relocated from Pyongyang and other cities to more remote parts of the country and usually made to work in mines due to low *songbun*, resulting from their grandparents or parents having come from South Korea, having moved to the South during the Korean War, or having been landlords or Christians. Families could also be relocated due to a family member having been charged as a political dissident and sentenced to a political prison camp (*kwanliso*).[440]

- Mr Ji Seong-ho, who provided testimony at the Seoul Public Hearing, spoke about having been raised in a town near a coal mine which was surrounded by mountains, and how the majority of the residents had been exiled from other regions. He described how the population was particularly affected by mass starvation in the late 1990s, since they were entrapped without food deliveries in the marginalized area: "*I was born in a mining area. A lot of people starved to death at the time. For livelihood, there wasn't much we could do to stay alive. We were surrounded by mountains. So we had to dig roots and [eat] the skins of trees and grass.*"[441]
- The daughter of a male abductee from South Korea, spoke of how her family was first exiled to a location in the mountains in the late 1970s. They were made to relocate again to an even more remote location about a year or two later following her father's death from suicide.[442]

364. The Commission also received accounts of party officials and their families who, without being duly convicted by a court of law, were assigned to hard labour in a remote area for failings in their duty or for lesser political wrongs committed by the official or a

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[436] TSH052.

[437] See section IV.B for more on *Songbun* system.

[438] National Human Rights Commission of Korea (NHRCK), Seoul Public Hearing, 22 August 2013, afternoon.

[439] Submission to the Commission: SUB055, Kim Hi-tae and Peter Jung, *The Persecuted Catacomb Christians of North Korea* (Seoul, Justice for North Korea, 2013), p. 41.

[440] TSH020, TSH030. See section IV.E on political prison camps.

[441] Seoul Public Hearing, 22 August 2013, morning (01:18:30).

[442] TSH032.

family member. One witness described how an elderly close relative had died during his stint of "revolutionizing" forced labour in a mine after giving unsolicited advice to Kim Jong-il.[443] These practices are on-going, evidenced by an amnesty that Kim Jong-un reportedly decreed in April 2012 for more than 600 officials who were undergoing such punishment.[444]

365. State-assigned employment as described above has a particularly harsh impact on men. Although men and women are both assigned places of employment upon completing their studies or military service, women who typically marry in their twenties in the DPRK are able to leave their state-assigned employment within a short time of getting married and when they have children. Men, on the other hand, are not released from the workplace designated by the state until the age of 60.[445] Men therefore could not drop out of their state-assigned place of work as easily as women. This included when many state-owned enterprises ceased to operate at full capacity, if at all,[446] during the famine in the mid-1990s. As women and men were not being paid or receiving food rations, women and men were forced to become creative in seeking incomes and household supplies. Married women were able to participate in the emerging underground markets with greater ease, while men had to find ways of circumventing the rigidity of the state-assigned employment to be able to engage in commercial activity on the side. Such engagement in commercial activity by men is, however, limited to those with both money to be able to pay a substantial bribe and good connections to the appropriate person in the organization who can "ignore" the entrepreneur's absence.

366. The Commission finds that the DPRK's policy of assigning its citizens' residence and employment and denying them the option to change them at their own free will violates the right to freedom to choose one's residence under article 12 of the ICCPR and the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts under article 6 of the ICESCR, in particular to the extent where such assignment is based on *songbun* social class.

(i) *Banishment from Pyongyang*

367. As noted earlier, special circumstances surround the status of Pyongyang. Only people with good *songbun* are allowed to live in Pyongyang. Its residents are specifically issued with resident cards distinct from the ones issued to non-Pyongyang residents.[447] If a family member commits an act deemed a political wrong or a serious non-political crime, the entire family is usually banished to a remote province and reassigned to other work. The consequences of this practice, which seems to have no basis under DPRK law, are often drastic. Adult family members are often reassigned to the most arduous and dangerous types of work, such as mining, logging or farming. The family also lose their privileged access to food, medical care and other public services that Pyongyang citizens enjoy.[448] They usually have no family support networks to make up for the ensuing shortfalls.

368. A former official, described to the Commission a crackdown in June 2009 on gambling, which was apparently rampant in the parks of Pyongyang. His superiors told him

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[443] TJH015.

[444] See Good Friends, "North Korea Today No. 456", 23 March 2012. Available from http://www.goodfriendsusa.blogspot.ch/2012/05/north-korea-today-no-456-may-23-2012.html.

[445] KINU, *White Paper on Human Rights in North Korea* (2013), p. 351.

[446] KINU, *White Paper on Human Rights in North Korea* (2013), p. 353 states that the average rate of factory operation is only 20-30 per cent due to the deteriorating economy and dilapidated infrastructure.

[447] KINU, *White Paper on Human Rights in North Korea* (2013), p. 235 footnote 187.

[448] See section IV.D.

about this order and the creation of a central inspection group composed of the Security State Department (SSD), Ministry of People's Security (MPS), Korean People's Army (KPA) and the prosecution office. As a result of the operation, 700 individuals were reported to have been arrested and sent away to ordinary prison camps (*kyohwaso*) with 400 households expelled from Pyongyang.[449]

369. In the past, the authorities pursued a strict practice of prohibiting families who had a child or adult member with a mental or serious physical disability from residing in Pyongyang. The policy was apparently motivated by a desire to maintain the image of a clean capital city whose population corresponded to the ideal of a pure Korean race.

- Mr Lee Jae-geun related how Kim Il-sung referred to Pyongyang as the capital of revolution and that there would not be anyone with disabilities, nor anyone who was against the regime, living there. According to Mr Lee, if someone was born with a disability, or became a person with a disability, that person and their family would be sent away from Pyongyang to the countryside.[450]
- Mr Son Jung-hun explained that only people with good *songbun* could reside in Pyongyang. He gave an example where if a man from Pyongyang formed a relationship with a woman from outside the capital, he would not be able to bring her back to Pyongyang if she did not have a good *songbun*. Instead, he would have to live in the woman's local region if he wanted to marry her. Families with a member who had a disability would also have to leave Pyongyang, but since they had not committed a crime and had good *songbun*, they would be merely relocated to the periphery of the city. Mr Son believed the reason for persons with a disability and their families having to move was because Pyongyang must be presented as a "sacred place" to foreign visitors. As such, weak and sick people could not be there, lest this might tarnish the image of Pyongyang. Mr Son had a friend whose father was a Central Committee member. However, because his child was "not of normal height", Mr Son's friend and his family had to move away from Pyongyang.[451]
- One witness that the Commission met was responsible for implementing the orders to transfer people expelled from Pyongyang. She received the orders and instructions from the government, and issued certificates for the move from Pyongyang City to other districts of Pyongyang. She said that if a citizen's father or mother is not loyal enough, then that individual is not eligible to live in the capital. That person must be sent to the local region, and so that person must have a moving card certified. She also said that persons with disabilities and their families are simply not allowed to live in Pyongyang.[452]

(ii) *Situation of street children*

370. The mass starvation and deaths resulting from the food crisis and the breakdown of early childcare, education and other public services produced an entire generation of children who were orphaned, abandoned or for other reasons no longer under the care of their parents. These children often ended up clandestinely migrating to Pyongyang and other cities. Video footage secretly filmed by collaborators of Rimjin-gang Asia Press

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[449] TGC004. See section IV.E on ordinary prison camps.

[450] Seoul Public Hearing, 23 August 2013, morning. For more on banishment of families with children with disabilities, see section IV.B.

[451] TAP011.

[452] TAP007.

International[453] and provided to the Commission show these children roaming the streets. Many of those portrayed appear to be no older than four or five years of age.

371. In light of the starvation and daily struggle for survival which they endure, these street children are euphemistically referred to as *Kotjebi* – flower-swallows. Because of the restrictions on residence, their presence is not tolerated and they constantly have to evade capture by the security agencies. Those captured are brought back to their home counties where they are forcibly institutionalized in poorly supplied holding centres or just left to survive by themselves. A former official who worked in a relevant government department estimated that there could be hundreds of thousands of street children in Pyongyang alone.[454]

- Mr Kim Hyuk, who became a street child at age seven after the death of his mother, testified about his life before the Commission: "*We were sleeping at night at the Chongjin train station. We were picking up food around the train station, and, when we were begging, people were more than willing to give us food. So, when there are no people around the train station, in the Chongjin city, there are houses for the officials. And if you go around the official's housing or apartments, they have food that they have thrown away so those kind[s] of food we could eat.*"[455]

  In 1997, at the height of mass starvation, a special police unit was assigned to apprehend such children. Those who did not have parents were forced to go to closed shelters that were not able to provide them with food: "*The shelters had no food to give. So many children starved to death, even at these shelters. And even the police said if you go to the shelters, the children die, but if they were allowed to be street children, they would survive.*"[456]

372. Police actions to round up and forcibly transfer street children are still being carried out.

- A former official recalled that SSD and MPS were assigned by Kim Jong-un in August 2010 to get rid of street children and unregistered citizens in Pyongyang. The goal was to make the capital city neat and tidy for the Central Committee Congress to be held in September 2010. To carry out the operation, additional SSD and MPS officials were called in from the provinces to carry out the operation. An extremely large number of street children were apprehended and sent to "rehabilitation homes" for street children in their provinces of origin. Adults were sent to labour training camps, or, in some cases, ordinary prison camps (*kyohwaso*).[457]
- One witness was arrested and beaten by MPS agents when trying to catch a train to Pyongyang. Along with other children, she was sent to a children's shelter. When they first arrived, they were told to stand on a chair, and were beaten with a thick leather belt. The children had to live in dark basement rooms and use a plastic bucket as a toilet. They were fed a small amount of salty soup with a little bit of radish and flour, two or three times a day. She remembers always being hungry. Her

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[453] ASIAPRESS started in Tokyo in 1987 as an independent network of journalists in Asia. In 2007 ASIAPRESS began publishing a magazine entitled "Rimjin-gang: News from Inside North Korea" in Korean and Japanese. (After the 4th issue of the Korean edition was released in April 2009, the Seoul staff began publishing on its own and is no longer connected with ASIAPRESS.)

[454] TAP024.

[455] Seoul Public Hearing, 22 August 2013, morning (00:26:16).

[456] Seoul Public Hearing, 22 August 2013, morning (00:31:42).

[457] TJH004.

parents found her after four months and collected her. Other children had been there for a year.[458]

- Another witness, who worked in the health sector in North Hamgyong Province, described how numerous mothers abandoned or even killed their babies at birth as they could not feed their children. She recalls that around 1997, the number of orphaned and abandoned children was so high that Kim Jong-il issued an order to the families of soldiers and security agents to adopt such children. Those that did were considered heroes.[459]

(b) Liberty of movement within one's country

373. In its submission to the Human Rights Committee in December 1999, the DPRK explained that its citizens are free to travel anywhere in the country subject to the "Regulation of Travel". Article 6 of this regulation requires citizens who want to travel to obtain a traveller's certificate. It was explained further in the DPRK submission that article 4 states that the "area along the Military Demarcation Line, military base, district of munitions industries and the districts associated with state security are travel restrictive."[460] In response to a related query raised by a Human Rights Committee member, the DPRK elaborated that only people on official business or those visiting relatives were allowed to travel to areas described as "restricted" under article 4. While it was acknowledged that permits were required for travel within the rest of the country, it was claimed that such permits could be obtained without restriction. The permit system was said to be necessary "to guarantee national security and thwart the activities of spies and saboteurs".[461]

- One witness informed the Commission that the ordinary citizen is not normally allowed to go to Pyongyang. He had understood that this was a security measure against ROK infiltrators wanting to enter Pyongyang to harm the Supreme Leader. The reason why it is difficult to get approval to go to the areas bordering China is due to concerns of people crossing the border without authorization. He also explained that permission to travel to Pyongyang or the border areas would only be granted in exceptional cases, such as attending a wedding or a funeral of a relative.[462]

374. According to the Korea Institute for National Unification (KINU), citizens can use their citizen card as a form of travel document within their respective provinces instead of a travel permit. In applying for a permit to travel to another province, citizens would normally have to wait about two to three days for a permit to be approved for travel to non-restricted areas and up to two weeks for restricted areas. The permit also provides for the length of travel and generally 10 days are given for a round-trip. Although these permits are to be issued free of charge, the process tends to be delayed if a bribe is not paid.[463]

375. There are guard posts at every province and county where a travelling citizen would have to produce a travel permit. There are also security agents on trains checking for such permits. If caught without a permit, the traveller could be punished, including by being detained in a holding centre (*jipkyulso*) or sent to a labour training camp for 10 days.[464] The DPRK's People's Security Control Act allows the People's Security Agency to exercise

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[458] TSH020.
[459] TSH051.
[460] CCPR/C/PRK/2000/2, para. 76.
[461] CCPR/C/SR.1944, para. 35.
[462] TAP005.
[463] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 22, 234-239.
[464] TAP002, TAP005, TBG024; NKDB, "Prisoners in North Korea Today", 2012, pp. 29-30.

control over violations regarding traveling rules, and those found to have disobeyed this Act are subject to warnings, fines and penalties such as unpaid labour.[465]

376. The Neighbourhood Watch (*Inminban*)[466] is further required to report the arrival of a traveller in a village or town. The traveller must also register with the local security agent upon arrival at the approved point of destination. As part of the citizen monitoring system breaks down due to economic hardship, bed check inspections are said to no longer be strictly enforced, and anyone caught can get away with a bribe. In practice, people increasingly by-pass the permit system by paying bribes at check points.[467]

- One witness, who resided in a non-border area, Chongjin, had used her friend's citizen card to travel to the border area, Hoeryong, since her friend resided in a border area and the picture on the computer-issued card was blurry enough to look like her.[468]
- Another witness explained to the Commission that because of his work, he could move around the country. However, in order to travel officially, he needed approval from four different entities. When he needed to travel for personal reasons, he would simply bribe the officers with cigarettes.[469]

377. Similar to the restrictions on employment, the restrictions on the right to movement appear to be more limiting for men than women. The primary reason for this is the requirement for men to "check-in" with employers, even if their state-assigned organization is not functioning. Many women who are not gainfully employed by the state can go undetected for longer periods of time as compared to men. This is presumed to be one of the underlying reasons for the disproportionate number of women able to leave the country.

378. According to the Human Rights Committee General Comments, restrictions on the liberty of movement are only permissible under exceptional circumstances. Criteria for restrictions must be laid down in law and the law may not confer unfettered discretion on those charged with their execution. The restriction must be necessary to protect national security, public order (*ordre public*), public health, morals or the rights and freedoms of others. Restrictive measures must not impair the essence of the right and they must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected. In particular, the relation between right and restriction, between norm and exception, must not be reversed.[470]

379. The requirement of a travel permit to specific areas, where restrictions are necessary to protect national security (notably areas in the immediate vicinity of the Military Demarcation Line) may be considered a proportional measure. However, the Commission finds that the requirement of having to generally apply for a permit to travel to Pyongyang

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[465] KINU, *White Paper on Human Rights in North Korea* (2013), p. 234.

[466] See section IV.A on the Neighbourhood Watch.

[467] NHRCK, Seoul Public Hearing, 22 August 2013, afternoon; KINU, *White Paper on Human Rights in North Korea* (2013), pp. 22, 234-238.

[468] TAP008.

[469] TSH052.

[470] CCPR/C/21/Rev.1/Add.9, paras. 11, 13-14, and 16-17.

or anywhere else outside the citizen's home province is a disproportional measure that violates article 12 (1) of the ICCPR.[471]

2. Right to leave one's own country

380. The Commission finds that DPRK citizens are subject to restrictions on foreign travel that in practice amount to a virtual travel ban on ordinary citizens, which is enforced through extreme violence and harsh punishment. This is likely intended to ensure as little exposure to knowledge which contradicts information that is propagated through state-controlled media and other means of indoctrination and information control.

(a) Total travel ban

381. According to the DPRK's immigration law, overseas travel is possible with the issuance of a passport or a border area travel permit.[472] By law, citizens are allowed to visit relatives in China but the personal information of such relatives including contact details are to be documented in the travellers' records. An invitation from the Chinese relatives must also be obtained in applying for a passport. A river-crossing pass may be issued to a DPRK resident in the border region who wants to visit China for a short trip. For those engaged in cross-border trade, a 24- or 48-hour pass can theoretically be issued immediately upon application, although this may not happen in reality.[473]

382. In practice, travelling abroad is a privilege reserved for those with good class or ideology.[474] Witnesses provided information to the Commission that people who are permitted to leave the country for official business are thoroughly examined and that they must have a spotless background. The responsible officer may even get into trouble for approving an application for travelling abroad if the person travelling later "defects". According to witness testimonies, if an applicant was born abroad, the responsible officer considering the application would not trust that applicant to not defect (having been exposed to the outside world and/or capitalist ways) and would therefore reject the application.[475] A failure to return from authorized travel abroad may also result in serious consequences for family members of the "defector" remaining in the DPRK.[476]

383. The Commission finds that ordinary DPRK citizens usually have no other choice than to illegally cross the border with China in order to realize their human right to leave their own country under article 12 (2) of the ICCPR. This is considered a serious offence. Article 233 of the Criminal Code considers any illegal crossing of the border an offence subject to less than two years of short-term labour, or, in grave cases, up to five years of reform through labour.[477] In practice, those who illegally cross the border are regularly considered to have committed "treason against the Fatherland by defection" under article 62 of the Criminal Code. This crime is punishable by a minimum of five years of "reform through labour". Illegal border crossers are alternatively charged under another of the vaguely defined and political "anti-state or anti-people crimes".[478] The MPS reportedly

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[471] See also CCPR/CO/72/PRK, para. 19 where the Human Rights Committee concludes that the requirement of a traveller's permit for domestic travel within the country raises serious questions vis-à-vis ICCPR, article 12 (1).

[472] DPRK Immigration Law 1996 as amended in 1999 and 2012, articles 9-12.

[473] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 246-247.

[474] NHRCK, Seoul Public Hearing, 22 August 2013, afternoon.

[475] TAP002, TSH052.

[476] TJH022.

[477] See Criminal Code, article 233. Note also article 234 which provides for punishment to those working in the border administration who help illegal border crossers.

[478] See section III.E for further on this.

issued a decree in 2010 making the crime of defection a "crime of treachery against the nation"[479] This view is taken in particular where persons have been in contact with Christian churches or ROK and/or US nationals while in China or make attempts to travel on to the ROK or another third state.

384. The approach towards considering those who illegally travel to China and beyond as political criminals is fuelled by official state propaganda and pronouncements of the Supreme Leader and other senior officials. Those who fled the DPRK (i.e. "defectors") and who speak out about their experience are regularly referred to as "human scum".[480] They are "branded as elements subject to legal punishment in the clean society in the DPRK for their crimes of murder, robbery, pilferage, embezzlement of state properties and corruptions [sic]". They are said to have been manipulated by the ROK and the USA in the latter's efforts to escalate confrontation with the DPRK and to topple the social system in the DPRK.[481] Two former SSD agents who served at the Chinese border, indicated that "defectors" were always considered traitors and less than human.[482] Another former security agent was told by his superiors that the Supreme Leader had ordered the "merciless" suppression of "defectors" and other anti-government dissidents. He has since heard from former colleagues in the security services, with whom he maintains contact, that Kim Jong-un issued a similar order upon personal visits to the headquarters of the SSD and the MPS.[483]

(b) Patterns of flight from the Democratic People's Republic of Korea and underlying reasons

385. The Commission has observed that until the end of the 1980s, very few people appear to have fled the DPRK illegally and those who did often did so for political reasons. In the 1990s, as a result of the escalating hunger and starvation in the country, illegal crossing of the border into China to flee from economic despair and the underlying human rights violations has become a mass phenomenon notwithstanding its criminalization. Large numbers of desperate citizens illegally crossed the border in order to find food and work, to trade goods, or to obtain assistance from relatives living in the Chinese provinces bordering the DPRK. They took advantage of the general breakdown of state control during the period of the famine.

- Mr Kim Kwang-il described how the only way people survived mass starvation in the 1990s was by illegally going in and out of China, and smuggling things in and out of China, in order to feed themselves. Even though he, like others, knew that it was illegal to do so and was at risk of being punished severely, Mr Kim stated that he had no option but to cross the border as the government was not feeding him and his family.[484]

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[479] The Committee for Human Rights in North Korea (HRNK), Written submission to the hearing before the Congressiona-Executive Commission on China, One Hundred Twelfth Congress, Second Session, "China's Repatriation of North Korean Refugees", 5 March 2012, p. 50. Available from http://www.hrnk.org/uploads/pdfs/Congressional per cent20Hearings/China_Repatriation_March_5_2012.pdf.

[480] The Korean Central News Agency used this term inter alia to describe those persons who fled the DPRK who appeared before the Commission to testify in public hearings. See "N. Korea slams U.N. rights committee, calls defectors 'human scum'", *Global Post*, 27 August 2013. Available from http://www.globalpost.com/dispatch/news/kyodo-news-international/130827/n-korea-slams-un-rights-committee-calls-defectors-huma.

[481] "Ministry of People's Security Vows to Punish Defectors Keen on Escalating Confrontation", *KCNA*, 19 June 2013. Available from http://www.kcna.co.jp/item/2013/201306/news19/20130619-01ee.html.

[482] TJH015, TJH041.

[483] TCC014.

- One witness had decided to cross the border in 1998 because he was starving and planned to seek help from his relatives there. He had every intention of coming back as he had wanted to complete his studies at the university. The situation became dire with the death of Kim Il-sung. In his university, the situation was so poor that students stole from each other. He travelled in secret towards the border area and knew he was lucky not to have been caught. He heard that if he was caught, he could be sent to a detention facility where those kept there are "not treated as humans". Such a description of the treatment in the detention facilities for repatriated persons is consistent with other testimony received by the Commission.[485]

386. Although hundreds of thousands of people were starving to death in the 1990s in the DPRK, the authorities never lifted the travel ban or allowed citizens from the border regions to go to China, where many had ethnic Korean relatives or could have found work to survive. Only in 1999 or 2000, as the situation was already improving, Kim Jong-il apparently issued instructions that those who showed that they only went to China for food and work should be treated with a degree of leniency.[486] However, even during the relative short period of "leniency", the practice of consistently punishing anyone forcibly repatriated from China was never fully abandoned.

387. Moreover, later in 2000, after the mass starvation ebbed off to some degree, orders were again given to "mercilessly suppress" all "defection" and the state forcefully reasserted its control over the border.[487]

388. Nevertheless, the patterns of illegal border crossing that emerged during the famine continued in the 2000s, despite on-going efforts to repress escapees from the DPRK and deter any unauthorized crossing using severe violence and harsh punishment. Since Kim Jong-un emerged as the heir apparent in 2009 and assumed many functions from the ailing Kim Jong-il, there has been a push to seal the border.[488] This has lessened outflows into China, evidenced also by fewer DPRK nationals reaching the ROK.

- Mr Kim Young-hwan, who works in a humanitarian network that has operations in the China-DPRK border region, informed the Commission that the number of people fleeing the DPRK peaked in 2009 with a progressive decrease thereafter. He noted an increased crackdown since Kim Jong-un came to power.[489]

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[484] Seoul Public Hearing, 24 August 2013, morning.

[485] TAP005. See also section IV.D.

[486] TJH004, TJH041.

[487] TJH004.

[488] EJH003 indicated that, apart from being driven by larger political reasons, Kim Jong-un may have also attached particular attention to border control since he was assigned to serve as a border guard as a young man.

[489] Seoul Public Hearing, 24 August 2013, afternoon.

389. Figures provided by the ROK Ministry of Unification on the number of DPRK citizens who have entered ROK also show a growing trend from 2001 up until 2009. The numbers decreased thereafter with a marked reduction between 2011 and 2012.[490]

390. The motivations of those who left in recent years have become more varied. Based on a survey conducted in 2012, the Korean Bar Association found that the pattern for "defections" has changed in that recent "defections" have been for political reasons rather than economic ones. Furthermore, "defections" by families outnumber individual "defections", and these "defections" appear to be more permanent than before.[491]

391. In some cases, people are fleeing to China to escape direct persecution for political or religious reasons.

- Mr A regularly travelled to China to find food to survive and also engaged in some trading activities. During these visits he came into contact with Christian churches. When the MPS interrogated him under torture about the reason for his visits, he took the decision to flee to China on a permanent basis.[492]
- One witness who was a practising Christian from North Hamgyong Province fled the DPRK in 2011. A fellow Christian gave away her name under torture before being executed. When agents of the KPA Military Security Command came to arrest her, she escaped across the Tumen River.[493]

392. A large number of DPRK citizens also fled the economic hardship and lack of food that endured even in the 2000s, especially in the marginalized areas near the Chinese border, as a result of discriminatory violations of the right to food.[494] Many of those who fled for such reasons were suffering socio-economic deprivation as a result of being classified in a low *songbun* social class, because the political loyalty of their forebears was put into question.[495] In some of these cases, they planned to go to China for a limited period to earn money, but were forcibly repatriated. As a result of repatriation and the punishment that followed, they were branded as political traitors and lost any remaining access to job opportunities, housing and other essential goods.

393. As they received more information about life outside the DPRK, persons who fled the DPRK increasingly sought to reach the ROK. Those who were successful in reaching

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[490] The following table showing the number of DPRK citizens who have entered ROK between 2001 and September 2013:

	~2001	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013.9*	*Total*
Male	565	511	472	624	423	512	571	608	671	589	797	405	250	7829
Female	479	632	810	1272	959	1510	1977	2197	2258	1813	1909	1097	791	17820
Total	1044	1143	1282	1896	1382	2022	2548	2805	2929	2402	2706	1502	1041	25649
Female ratio	46 per cent	55 per cent	63 per cent	67 per cent	69 per cent	75 per cent	78 per cent	78 per cent	77 per cent	75 per cent	70 per cent	72 per cent	76 per cent	69 per cent

Source: ROK, Ministry of Unification, *The Number of North Korean Defectors*. Available from http://www.unikorea.go.kr/index.do?menuCd=DOM_000000101007001002.

[491] KBA, *2012 White Paper on Human Rights in North Korea*, pp. 54, 510-513.

[492] Seoul Public Hearing, 22 August 2013, afternoon (with additional details provided by the witness in a confidential interview).

[493] TJH017.

[494] See section IV.D.

[495] See section IV.B.

the ROK then sought to bring other family members and relatives to the ROK. Clandestine escape networks, some composed of humanitarian activists and others of professional people smugglers,[496] emerged. DPRK citizens often moved from China via Mongolia to the ROK. Since 2007, the Mongolia route has effectively been closed because of tighter Chinese border controls there. Thereafter, DPRK citizens bound for the ROK usually proceed through Viet Nam, Laos or Cambodia to reach Thailand and from there the ROK.[497]

394. According to ROK official statistics, 26,028 persons who fled the DPRK have become ROK citizens as of November 2013. Of these, over 80 per cent came from the border regions, i.e. Hamgyong and Ryanggang provinces, and over 70 per cent were aged between 20 and 49. A steady increase has been seen in the number of women and family units among those who fled the DPRK, with women accounting for around 70 per cent of those resettled in the ROK. It is therefore also estimated that more than 70 per cent of those fleeing the DPRK are women, although a large number remain in China. Sizable numbers of DPRK citizens have been granted refugee or other permanent resident status in the United States of America, the United Kingdom, Japan and other countries.

395. Since those who flee the DPRK generally reside clandestinely in China, it is very difficult to estimate how many DPRK citizens currently live there. While estimates vary greatly, there also seems to be fluctuation over time and a decline that coincided with the reassertion of control over the border, coupled with large numbers of forced repatriations from China in the later 2000s.

396. In 2005, the humanitarian organization Good Friends estimated that the number of DPRK citizens in the Chinese provinces along the DPRK border was 50,000. In 2006, the International Crisis Group estimated the number to be 100,000 based on interviews with local Chinese and Korean-Chinese interlocutors and other NGO reports. A 2010 survey, by Professor Courtland Robinson of Johns Hopkins University estimated the total number of DPRK citizens in the three north-eastern provinces of China to be 6,824, with an additional 7,829 children born to mothers from the DPRK. In 2013, KINU estimated the total number of DPRK nationals living in the three Chinese border provinces with an ethnic Korean population to be about 7,500 (at least 4,500 and less than 10,500) adults and 20,000 (at least 15,000 and less than 25,000) children in 2012.[498]

(c) Border control measures

397. Since 2009, there has been an apparent renewed push to seal the border, driven by both the DPRK and China. The latter was particularly concerned about inflows of undocumented migrants as well as drug trafficking originating from the DPRK. Fences and other barriers have been set up by both the DPRK and China along some stretches of the border, where crossings have most frequently occurred. In addition to obtaining witness

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[496] Note that people smugglers are not necessarily involved in the trafficking of persons. The latter requires the element of "exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" at minimum. See the Palermo Protocol on this.

[497] EJH003.

[498] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 44, 459-461. See also International Crisis Group, "Perilous Journey: The Plight of North Koreans in China and Beyond", 26 October 2009. Available from http://www.crisisgroup.org/en/regions/asia/north-east-asia/north-korea/122-perilous-journeys-the-plight-of-north-koreans-in-china-and-beyond.aspx. The approximate figure of 100,000 was also advanced by the humanitarian organization Life Funds for North Korean Refugees for 2007. Available from http://www.northkoreanrefugees.com/faq.html.

testimony from recent visitors to the border, the Commission also reviewed relevant pictures showing such installations.

398. The SSD, MPS and KPA are all deployed in the border region and closely coordinate their actions to prevent escapes from the DPRK. After Kim Jong-un assumed power, the SSD was also assigned to assume the lead on border control, taking over from the KPA Border Security Command. This move is said to be driven by dissatisfaction over corruption in the army. According to one witness, who has worked with DPRK nationals in China, the authorities frequently switch guards since 2010, making it harder for guards to be bribed for assistance in crossing the border.[499]

399. KINU reported that from 2009, the SSD implemented new measures against "defectors", including tighter surveillance over families with members who are missing or have "defected". Even law enforcement workers were investigated for any relatives who have "defected", and, if so, they would be removed from their positions. In 2010, a census survey was reportedly carried out conducting an in-depth inspection of "defector families".[500] "Banishment villages" were supposedly designated in remote areas where the "defector families" would be sent to, although this plan appears to have abandoned.[501]

400. Following the death of Kim Jong-il in December 2011, the DPRK increased restrictions on the movements of its citizens during the mourning period, with bed-check inspections being carried out more intensely and every family along the border region required to stand guard in turn. Land mines were reportedly installed along the border in addition to barbed wire fences, and cameras were set up along major defection routes as well as spiked panels with four-inch nails along the banks of the Tumen River.[502]

401. In November 2013, DPRK authorities were reported to be increasing their surveillance of families of suspected "defectors", including through the reporting mechanism of the Neighbourhood Watch. It was further reported that "Families with members who have defected or whose whereabouts are unconfirmed must register with their local People's Security Bureau ... It looks like rising numbers of missing persons and defectors have led the authorities to try and block anyone else from defecting by stepping up surveillance and controls."[503]

402. Former DPRK security officials indicated that officials may shoot to kill anyone trying to cross the border, a policy which dates back at least to the early 1990s and remains in place.[504] A former SSD agent involved in border control indicated that border guards who shoot at DPRK citizens trying to flee the country would not be punished.[505] Another former official testified about the killing of a person who illegally crossed the border in January 2011.[506] This was also confirmed by the testimony of Mr Kim Young-hwan,[507] a humanitarian activist involved in operations to help those who flee the DPRK, as well as another witness, who engages in similar operations.[508] Shooting directives appear to have

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[499] TJH010.

[500] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 461-462 footnote 12.

[501] Available from http://goodfriendsusa.blogspot.ch/2011/09/north-korea-daily-no-417-august-24-2011.html.

[502] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 45, 461-463.

[503] "People's Units Working to Limit Defection", *Daily NK*, 6 November 2013. Available from http://www.dailynk.com/english/read.php?cataId=nk01500&num=11150.

[504] TJH015, TJH041, TBG031.

[505] TJH015.

[506] TBG027.

[507] Seoul Public Hearing, 24 August 2013, afternoon.

[508] TJH010.

been modified based on superior orders in 2010 or 2011, after DPRK agents shot and killed a number of persons on the Chinese side of the border. While DPRK agents are now ordered to take care not to harm people on the Chinese side, the basic authorization to shoot and kill those who try to flee remains in place.[509]

403. This shoot to kill policy cannot be justified as a legitimate border control measure since it violates international human rights law. The DPRK upholds a de facto total travel ban on ordinary citizens that violates international law and gives individuals no other option than to cross the border without authorization in order to exercise their human right to leave their own country. Furthermore, the intentional taking of life for the purposes of preventing the unauthorized crossing of a border is also grossly disproportionate and irreconcilable with article 6 of the ICCPR, which only allows the use of lethal force by state agents in self-defence or defence of others to protect life against immediate threats.[510]

404. The Commission also found a practice of SSD agents abducting persons who flee the DPRK from the territory of the People's Republic of China. Former officials who flee and others who might give away sensitive information are targeted, along with humanitarian activists and others who help DPRK nationals flee.[511]

(d) Torture, inhuman treatment and imprisonment of persons who tried to flee the Democratic People's Republic of Korea

405. In an attempt to deter citizens from fleeing the country, the DPRK authorities subject those who were forcibly repatriated from China or were caught in the process of trying to reach China to torture, inhumane treatment and imprisonment.

406. In the 1990s, when the authorities were confronted with the first cases of citizens fleeing mass starvation, the authorities often sought to set a deterrent example to the population.

- Ms Kwon Young-hee spoke to the Commission about her brother who was arrested in China in 1994 for attempting to "defect" from the DPRK. He had gone to China in search of food. As an example to others against committing similar "anti-state" offences, he was tied to the back of a truck which took him to their home town, Musan.

  "*By the time he reached Musan, his face was covered with blood, his clothes were all torn. And when he fell, they stopped the truck and rushed him to stand up again. At the time my brother was discharged [from the army] for malnutrition, and he was diabetic. My mother tried to treat his diabetes in the hospital so he was diabetic at the time he went to China. … Even when my brother collapsed, the truck would go on and the* Bowibu *people, when my brother collapsed, would beat my brother up to make him stand up. Musan is a big city but they drove him around Musan city three times so that everybody could see him.*"[512]

- In 1993, a family fled to China and was forcibly repatriated to their hometown in Onsong County, North Hamgyong Province. The whole family, including a boy of five years of age, were paraded in handcuffs around town. The mother and father were then dragged around like oxen with rings that had been rammed into their noses. The entire town, including one witness who spoke to the Commission (who was 13 years old at the time), was forced to attend the brutal spectacle. The spectators swore at the victims and threw rocks at them. The witness did not know what became of the family.[513]

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[509] TBG031, a former official.

[510] International human rights law only allows the use of intentional force if strictly necessary to protect life. See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, "Study on Targeted Killings" (A/HRC/14/24/Add.6, para. 32).

[511] For more information on these abductions, see section IV.F.

[512] Seoul Public Hearing, 24 August 2013, morning (02:14:00).

- In 1996, another witness saw how the authorities in Musan used a car to drag a man using a hook pierced in his nose. They announced by loudspeaker that they had caught a traitor and "had to pay the Chinese four times the village's budget to get him back". Little children followed the car and threw stones at the man. This terrifying experience triggered the witness to flee the DPRK.[514]

407. As more and more people fled from the DPRK during the mass starvation of the 1990s, the DPRK authorities seemed to have systematized their punishment of repatriated persons. The process follows very regular patterns and different security agencies closely coordinate their actions. Based on interviews with repatriated persons and former officials, the Commission finds that the actions described below generally reflect the treatment of DPRK nationals upon repatriation from China.

408. DPRK citizens who leave the DPRK illegally and are arrested by the Chinese authorities are handed over to the SSD at the border. There are at least five known border towns through which repatriated persons are taken to and "processed": Hoeryong, Hyesan, Musan, Onsong and Sinuiju.[515] Initially, repatriated persons are taken to an SSD interrogation detention centre near the border, where they suffer repeated illegal and sexually invasive body cavity searches (see below). SSD agents then question them on how and why they fled, including who assisted them in their departure from the DPRK and what they did in China. This interrogation usually involves torture of the kind described in section IV.D.2.

409. Depending on the nature of the allegations against them and their background, the fate of repatriated persons is determined by the SSD. Persons found to have made contact with ROK nationals and/or Christian missionaries are sent for further interrogation at the provincial SSD headquarters. From there, they are sent either directly to a political prison camp (*kwanliso*) without any trial or imprisoned in an ordinary prison camp (*kyohwaso*) after an unfair trial.[516] In cases considered to be particularly grave, such as having contact with ROK intelligence officials, the victim faces execution.

410. Conversely, those found to have solely gone to China looking for food and/or work are handed over to the MPS, where the interrogation process is usually recommenced. If the MPS confirms that the person is only an "ordinary" border crosser, it commits him or her to detention in a holding centre (*jipkyulso*). There, the person remains detained, sometimes for months, until MPS agents from the person's home county collect him or her and place the victim, usually without a trial, for several months to a year in a labour training camp (*rodongdanryundae*).

- A former SSD agent, who worked in border security, indicated that the SSD considered anyone who illegally fled to China to be a traitor, no matter their reason, and would "not treat them as human". However, the worst types of "defectors" were those who were planning to go to the ROK or had contact with ROK intelligence agencies. People who agreed to spy for ROK intelligence agencies were always executed. In the case of Christians, the SSD tried to ascertain how long a person had been a Christian. They looked at the circumstances, e.g. whether the person tried to bring Bibles into the DPRK. In such cases, the persons were typically sent to prison camps without a trial.[517]

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[513] TJH038.

[514] TJH018.

[515] David Hawk, *The Hidden Gulag: The Lives and Voices of 'Those Who Are Sent to the Mountains'*, Washington D.C. The Committee for Human Rights in North Korea, 2012) p. 118.

[516] See section IV.E.

- One former security official indicated that he received orders from his superiors to classify "defectors" into three groups. The first group were those who crossed the border only for food with the intention of coming back to the DPRK – they were to be sent to labour camps for three to six months. The second group were those who left the DPRK with the intention of reaching the ROK – they were to be sent to an ordinary prison camp (*kyohwaso*). The third group were those who leave the DPRK with the intention of going to the ROK using channels provided by Christian groups or the ROK intelligence network – they were to be sent to a political prison camp (*kwanliso*). Public executions of "defectors" were carried out where politically expedient.[518]
- Another former SSD agent indicated that people forcibly repatriated from China were treated entirely differently from those who returned to the DPRK voluntarily. They were to be interrogated as to whether they had been in contact with churches or with ROK nationals, and, if so, they were to be sent to the SSD provincial headquarters and from there to a *kwanliso*. The rest were to be sent to MPS facilities and from there to an ordinary prison (*kyohwaso*).[519]

(i) *Torture and inhuman treatment during interrogation*

411. The Commission finds that during the interrogation carried out by the SSD and MPS, severe beatings and other forms of torture are systematically used, until the interrogators are convinced that the victim has stated the truth and confessed to the totality of his or her wrongdoing. With rare exceptions, every single one of more than 100 persons repatriated from China who were interviewed by the Commission were beaten or subjected to worse forms of torture during interrogations. Inhumane detention conditions that characterize the interrogation detention centres of the SSD and MPS exert additional pressure on detainees to confess quickly to secure their survival.[520]

412. During the interrogation phase, suspects receive a quantity of rations that is designed to cause hunger and starvation. In some interrogation detention centres, inmates are also subjected to forced labour in farming and construction. This violates international standards which prohibit imposing forced labour on persons not duly convicted.[521] Inmates who are not being interrogated or who are not working have to sit or kneel the entire day in a fixed posture in often severely overcrowded cells. They are not allowed to speak, move, or look around without permission. Failure to obey these rules will be punished by beatings, food ration cuts or forced physical exercise. Punishment is often imposed collectively on all cellmates.

- Mr Kim Song-ju said at the London Public Hearing: "As soon as I set my foot back in North Korea, the treatment of me was [as though I was] below human... In the course of interrogating me. they hit me, because they asked me whether I was in contact with South Koreans, or if I had gotten involved with any religious acts, but because my answer was no, they tried to frame me of some sort of crime and they treated me as [though I was] below human."[522]

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[517] TJH015.

[518] TJH004.

[519] TJH041.

[520] See also section IV.E for more details and illustrative examples on torture, deliberate starvation and inhumane conditions of detention imposed on persons held at interrogation detention centres.

[521] See further section IV.E on international standards.

- Mr Ji Seong-ho went to China the first time in 2000 seeking food to feed his family. He was arrested by the police four kilometres from the border after re-entering the DPRK. He was questioned and asked whether he had listened to South Korean radio broadcasts and if he had met with ROK nationals, whether Christians or media people, in China. His interrogators, who beat and tormented him, said that as someone with a disability begging for food in China, he would bring shame to the DPRK if the foreign press saw him. He was eventually released under the condition that he never went back to China.

413. The third time Mr Ji went to China was in 2006, with the intention of going to the ROK. Mr Ji had wanted to reach the ROK first to determine whether it would be a good idea for his father to join him there. Once he resettled in the ROK, he tried to contact his father. However, he discovered that his father was arrested during an attempt to cross the border. He further found out that his father was interrogated and tortured by the SSD. He was then returned to his home in a cart, practically dead.[523]

- Mr A spoke of his sister whom he learnt from his contacts in the DPRK to have been repatriated and then tortured under interrogation before being sent to Yodok Camp. He believed she was treated harshly and sentenced severely because she was a practising Christian and she had the intention to proceed to the ROK.[524]
- The treatment Ms Jee Heon A experienced during her third repatriation was the worst. She was beaten for simply resisting to take off her clothes during a strip search. She was questioned whether she had attended a church or met any ROK nationals. She knew that she had to answer in the negative, as otherwise she could be sent to a *kwanliso* or even executed. She was beaten up for not confessing to these "crimes". She was then sent to a *jipkyulso* before being sent eventually to a *kyohwaso*.[525]
- One witness was interrogated for two weeks at an SSD interrogation centre. She was beaten with a club whenever she was slow to respond or if her interrogators did not like her answer. They also kicked her right below the knee to induce a maximum of pain. She believed that others were suffering the same fate as she could hear them screaming.[526]
- Another witness was kept six weeks for interrogation by the SSD in a holding facility. The SSD officials who interrogated her beat her to find out if she had been in contact with ROK nationals or Christians. At this facility, the witness also saw guards stomping, beating and pulling the hair of a girl of about 18 years old who was apparently known to the guards as she had been arrested several times before. After six weeks, the witness was sent to the SSD provincial detention centre where she was beaten again to get her to confess that she had been in contact with ROK nationals or churches and to reveal those who had arranged for her to cross the border. Whenever the witness and other detainees were not interrogated or made to work at the detention centre, they had to kneel with their hands behind their back and keep their heads down. The same posture had to be maintained even when

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[522] London Public Hearing, 23 October 2013, session 1 (00:19:45).

[523] Seoul Public Hearing, 22 August 2013, morning.

[524] Seoul Public Hearing, 22 August 2013, afternoon.

[525] Seoul Public Hearing, 20 August 2013, afternoon.

[526] TBG013.

questioned by a guard. Once, the witness mistakenly looked up and was kicked with a heavy boot in the chest by a guard. An old woman who had no shoes and asked for shoes in order to work was told by the SSD agents that she did not deserve shoes because the detainees were animals and should die soon. The old woman was beaten up by the guards and ended up bleeding.[527]

- While being held with others repatriated from China at an interrogation detention centre, a witness saw a young woman who folded her hands in a praying fashion when the SSD interrogated her. The SSD suspected therefore that she was a Christian. They took her to another room and beat her until she confessed. All inmates of her cell were not allowed to sleep until the woman confessed. The witness does not know what happened to her after that. She also overheard the SSD saying to one family that they would be taken to a political prison camp because they had made contact with Christians in China.[528]

414. Several other witnesses gave similar accounts as to their experiences when interrogated upon repatriation to the DPRK.[529] One witness who was sick with fever during his detention was accused of faking his illness and was beaten even more severely.[530]

(ii) *Sexual violence and other humiliating acts against women, in particular invasive searches*

415. Upon arrival at detention centres, repatriated persons are subjected to exercises whilst nude and invasive body searches. This treatment is intended to confiscate and steal hidden money from the victims, rather than to obtain evidence to be used in court. As such, the searches are in breach of article 143 of the Code of Criminal Procedure, which allows searches only for purposes of seizing evidence. Especially with regard to female victims, the searches are carried out in a deliberately degrading and unsanitary manner

416. Victims are forced to undress in front of other prisoners as well as other guards, often of the opposite sex, and then forced to perform numerous continuous "squats" while nude, an act also known as "pumping". This is intended to dislodge any items that may be concealed within vaginal or anal cavities. The Commission heard several accounts of repatriated persons having to strip naked and perform naked squats in groups while guards searched their clothes for money and other valuables.

- One witness described there being a very large ditch outside the detention facility, which was used for the purpose of the strip searches:

  "The prisoners were told to get in the hole and remove their clothes. We had to throw the clothes to the guards who would keep them if they liked them. We were forced to jump and do pumping. Then someone put their hands in everyone's vagina and anus to check for money or other valuables. We were all together at this time, males and females. After the body search, we were forced to kneel in a cell on our hands and knees."[531]

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[527] TJH028.

[528] TJH032.

[529] TAP010, TSH018, TSH029, TSH049.

[530] TSH031.

[531] TSH029.

- Ms P was repatriated after having been detained by Chinese authorities for 15 days. Upon repatriation, she was strip-searched and made to squat and stand 100 times by the SSD. She was questioned and beaten until she fainted.[532]

- Upon transfer to the DPRK, one witness and other women were strip-searched by DPRK officials. The women had to hold their hands behind their head while they were being searched by female guards. After that they had to do 100 squats while still naked.[533]

417. Repatriated women are also subjected to unsanitary vaginal searches. Ordinary guards, often using the same gloves on multiple women, or no gloves at all, will insert their hands into the inmates' vaginas in search of money. In some cases, such searches are even performed by men. During the entire time in detention, guards keep detainees under close surveillance to see whether they have hidden money in any body cavities. Guards also look for items possibly hidden by the detainees in their faeces. Detainees were even beaten for not defecating in order for such an inspection to be carried out.

- Mr Kim Young-hwan, who works with former nationals of the DPRK, including by providing assistance to them in China, has heard many testimonies about the inhuman treatment faced by repatriated persons, particularly women. Women are forced to strip naked and made to squat several times ("pumping") to ensure that anything hidden within their bodies can be discovered. For the same purpose, manual body cavity checks are carried out, including vaginal and anal examinations. In some instances, male personnel may carry out such searches and on female detainees.[534]

- Ms Jee Heon A was rounded up for repatriation with several other DPRK women, including one pregnant woman. During the transfer to the border, the pregnant woman went into labour on the bus they were travelling in and gave birth to a baby who died during birth. Those repatriated, including the mother, were made to undergo searches including manual body cavity checks by male personnel and made to squat and stand up several times. Ms Jee told the Commission that the searches "*made us feel degraded as women. We were stripped naked when we were arrested, they searched our bodies, even our vaginas. They made us squat and stand, repeatedly.*"[535]

- Mr Kim Song-ju observed from his cell at the Musan MPS Interrogation Centre how 10 women who had been repatriated from China were lined up in a row before a female officer inserted her hand into their vaginas one after the other. Mr Kim also recounted how the guards ordered him, in his capacity as designated cell leader, to monitor the faeces of inmates to watch out for hidden money. The guards took any money found.[536]

- One witness recalled how she and other women were searched by officials who intended to take their money at the SSD Interrogation Detention Centre in Sinuiju. She described that an elderly female officer of high rank personally conducted the searches, using the same glove for each victim, causing the witness to develop an infectious disease. The high-ranking officer also verbally humiliated a very young woman while inserting her hand into the woman's vagina.[537]

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[532] Seoul Public Hearing, 21 August 2013, afternoon (with additional details provided by the witness in a confidential interview).

[533] TJH028.

[534] Seoul Public Hearing, 24 August 2013, afternoon.

[535] Seoul Public Hearing, 20 August 2013, afternoon (02:35:00).

[536] London Public Hearing, 23 October 2013, session 1 (with additional details provided by the witness in a confidential interview).

- Another witness also described a single glove being repeatedly used when a guard at the SSD Interrogation Centre in Onsong conducted vaginal searches on her and other women repatriated from China. The women were also subjected to nude squats.[538]
- Another witness related to the Commission of being physically abused the moment she re-entered the DPRK. She and others were taken to a detention facility where women were placed in a room separate to the men and had all their clothes and belongings removed and taken away. They were made to lie down on their backs with their legs spread and an invasive thorough body search was conducted by the guards who were looking for cash, letters and phone numbers. A female guard wearing rubber gloves conducted a search of their body cavities. The witness saw that other guards were looking and laughing at them through the open windows of the facility while this search was conducted. The witness heard that a man who was caught concealing a credit card was taken to a separate room and severely beaten up. After one month, the witness was transferred to another detention facility where she was subjected to another round of thorough body searches. In her group, there were an elderly woman and a woman at a very advanced stage of her pregnancy. Both were not spared from physical and verbal abuse. They were made to squat and stand up 100 times. When the old woman was too weak to carry this out, female guards kicked her until she fell, bringing down with her the pregnant detainee who was standing next to her. The pregnant detainee was in pain from the fall but the guards simply started cursing her and shouted that she was carrying a Chinese baby in her womb. The guards eventually took her to the medical facility of the detention centre. When the pregnant detainee returned three days later, she was no longer carrying a child and she informed the rest of the detainees that she had a miscarriage.[539]

418. The Commission appreciates that body cavity searches can in some circumstances be necessary for purposes of gathering evidence or ensuring security in detention and other facilities. However, strict standards of legality, necessity, proportionality and humane process have to be obeyed. In addition to being duly authorized by law, they must be carried out with a legitimate purpose and only where necessary and proportional, in a humane and sanitary manner, and by qualified persons with appropriate training.[540]

419. The Commission finds that the type of searches carried out in the DPRK fall short of these standards. Repatriated persons are systematically subjected to invasive body searches, which are conducted by ordinary guards in the presence of other prisoners and serve the primary purpose of stealing any money that repatriated persons may have brought back with them. Such searches are illegal under the DPRK Code of Criminal Procedure, which only allows searches for purposes of gathering evidence, and also constitute crimes under the Code of Criminal Procedure.[541] Those who resist are beaten into submission.

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[537] TBG013.

[538] TBG018.

[539] TGC001.

[540] See World Medical Association, "Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly held in Budapest, Hungary", October 1993, also available from http://www.wma.net/en/30publications/10policies/b5. See also CAT/C/HKG/CO/4, para. 10.

[541] See Code of Criminal Procedure, article 143 and Criminal Code, article 252.

420. The insertion of hands by female, and sometimes male, guards into the victim's vagina entails a bodily invasion. International criminal law considers any unjustified coercive invasion of the genital opening of the victim with a part of the perpetrator's body as rape.[542] Considering the overall degrading circumstances surrounding the searches, the lack of legitimate purpose and the failure to respect international standards on cavity searches, the Commission finds that in many instances the searches amount to rape, as defined under international criminal law.

421. In addition to strip searches, the forced continual squats whilst naked and vaginal cavity searches, repatriated women have also been subjected to other forms of sexual violence.

- While being repatriated on a truck from China, a witness saw a DPRK agent groping the breasts of another woman. When the agent saw the witness looking at him, he slapped her.[543]
- Another witness told the Commission that in the detention centre for repatriated persons, women were regularly sexually abused. In addition to being forced to do naked squats continually and vaginal searches, women were forced to get naked by guards and beaten.[544]

422. Repatriated women are further subjected to inhuman and degrading treatment by guards at detention facilities. Many reported being spoken to in a derogatory manner and others subjected to deliberately humiliating treatment. The Commission also received testimony of sanitary napkins being taken from repatriated women when bleeding at the time.[545]

- Ms Jee recalled the guards asking repatriated women about their sexual experiences in China.[546]
- Another witness told the Commission about being berated for "*betraying her country*" by leaving, and asked particularly humiliating questions such as "*do you like the taste of Chinese men?*" during interrogations.[547]
- Another witness heard guards beating a repatriated woman, asking her "*did you enjoy sleeping with a Chinese man?*"[548]
- At the London Public Hearing, the Commission heard from Ms Park about the humiliating treatment she suffered in detention after repatriation. Ms Park was strip searched, subjected to an invasive vaginal search and nude squats. She explained to the Commission that the guards search for money also involved tearing clothes and sanitary napkins. As her sanitary napkins were destroyed, Ms Park used a small

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[542] See Elements of Crime, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, September 3–10, 2002, article 7(1)(g)-1, para. 1. See also Prosecutor v, Furundzija,. IT-95-17/1-T, Trial Judgment, para. 185; Prosecutor v. Seasay et al, Case No. SCSL-04-15-T, para. 145; Prosecutor v. Sesay et al Prosecutor v. Brima et al, Case No. CSL-2004-16-T, Trial Judgment, para. 693. Prosecutor v Akeyesu, para. 688. See also id., where the International Criminal Tribunal for Rwanda finds that thrusting a piece of wood into a dying woman's vagina constitutes rape.

[543] TJH032.

[544] TSH015.

[545] TJH032, TSH050.

[546] Seoul Public Hearing, 20 August 2013, afternoon (02:38:00).

[547] TSH029.

[548] TJH032.

piece of towel during her menstrual period, but was punished by the guards in a humiliating manner for washing the towel,

> *"[E]very morning we were given a small container full of water to wash our face and this particular day I used it to the water to wash the soiled towel but I was found out and I was punished for misusing the water. I had to wear the bloody towel over my head, which was my punishment for the whole day."*[549]

(iii) *Conditions at the holding centre (jipkyulso)*

423. Once those repatriated have been interrogated and determined to be regular border crossers, they are often sent to a holding facility (*jipkyulso*) to wait to be picked up by the MPS. They may be held here for days and even months. Sometimes these centres also serve as the place where the repatriated persons carry out their sentence. Conditions at the holding centres are inhuman, and a policy of imposing deliberate starvation on prisoners continues to be in place.

- One witness told the Commission about having received two spoonfuls of maize and a bowl of radish pickle soup per day when she was held at the *jipkyulso*. She was kept in a cell with about 10 others which measured 2 metres by 2 metres. A hole in the ground was used as the toilet and the detainees had to ask for permission from the guards first before using the hole. If caught using it without permission, the detainee would be dragged out of the cell and be beaten by the guards. The beating would increase if the detainee cried or pleaded for mercy. The witness was kept at a second holding facility for five months before she was transferred to where she was to serve her sentence.[550]
- After her interrogation had concluded, one witness was sent to the Chongjin holding centre. She was detained there for a year because the MPS officers from her home region did not come to collect her. Without having been convicted of any crime, she was subjected to forced labour and daily ideology training. She almost died from a fever as a result of the conditions in the lice infested cells.[551]
- Another witness spoke to the Commission about having spent five months in the Chongjin *jipkyulso*. Life there was extremely hard. The inmates only received five spoons of boiled corn three times a day, with no vegetables or salt. They also received some hot water. The witness traded his Chinese-quality clothes with other prisoners who received extra food sent by relatives. Adults were forced to work hard for 10 hours a day in brick laying, timber cutting and farming. If they did not fulfil their daily work quota they had to work for longer. The witness was spared because the authorities thought he was still a child. He personally witnessed 13 men dying during his time in this *jipkyulso*. Their bodies were wrapped up and left for days for the other inmates to see so as to instil fear in them. The guards told them, "This is what happens when you abandon your country."

  When the corpses started to rot, the other prisoners were made to go to the mountains where they dug a hole and dumped the bodies without any coffin, ceremony or gravesite marking. The guards also assigned hardened criminals to ensure discipline among the detainees. Those who were repatriated were treated more harshly than ordinary criminals by these "disciplinarians". One night they beat to death a repatriated man who had been suspected of being in touch with ROK nationals in China. The witness could hear the beating going on all night without any intervention from the guards. The witness assumed the guards did not expect that the man would be beaten to death. The man who was beaten to death had a 7 or 8 year old son who was kept in the same juvenile cell as the witness. After being detained for one more month, the child was sent to an orphanage.[552]

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[549] London Public Hearing, 23 October 2013, session 2 (01:03:00) and the confidential interview with the witness.

[550] TGC001.

[551] TBG018.

(e) Forced abortion and infanticide against repatriated mothers and their children

424. The Commission finds that there is a widespread prevalence of forced abortion and infanticide against repatriated mothers and their children, in contravention of domestic and international laws. Forced abortion occurs when a woman who wants to carry her pregnancy to full term is required to terminate it against her will. Infanticide is generally defined as a mother or other person killing an infant soon after birth. This only appears to have occurred when attempts to abort the pregnancy of a woman repatriated from China failed, or could be conducted because the woman was at an advanced stage in her pregnancy and the baby was born alive.[553]

425. The vast majority of forced abortions and infanticides upon pregnant women repatriated from China and their children are conducted when the women are detained at holding centres (*jipkyulso*) and interrogation and detention centres (*kuryujang*, SSD facilities). In extreme cases, forced abortions and infanticides upon repatriated women and their new-born children may occur inside regular prisons (*kyohwaso*) or in political prison camps (*kwanliso*) when a woman's pregnancy has gone undetected in the gathering, interrogation or detention centres for repatriated persons. The pregnant woman may have avoided a forced abortion earlier through bribery or other means, or because she was at an advanced stage in her pregnancy at the time of repatriation and was promptly transferred to a prison before she gave birth.[554]

426. Witness testimony points to DPRK authorities' disdain for ethnically mixed children – specifically children conceived to Chinese men – as the driver of forced abortions upon pregnant women and infanticide of their babies.[555] Secondary sources and witness testimonies point to an underlying belief in a "pure Korean race" in the DPRK to which mixed race children (of ethnic Koreans) are considered a contamination of its "pureness".[556]

- Forced abortions are carried out on the premise that all repatriated pregnant women could be carrying babies conceived by Chinese men. The women are not asked about the ethnicity of the father of the child.
- A woman who had been repatriated several times and witnessed two pregnant women subjected to forced abortions told the Commission, "*if you get pregnant in China, the assumption is that you have been impregnated by a Chinese man, therefore women returning to the DPRK pregnant are subjected to forced abortions.*"[557] If the forced abortions are carried out on the assumption that all pregnant women are carrying babies conceived by Chinese men, the authorities are reckless in their assumption as women are not asked what ethnicity the father of the child is.

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[552] TJH037.

[553] TBG018, TSH049.

[554] TSH029.

[555] TAP003, TSH029, TSH051, TBG024.

[556] David Hawk, *The Hidden Gulag: The Lives and Voices of 'Those Who Are Sent to the Mountains'*, p. 66.

[557] TAP003.

- A former SSD official explained to the Commission that the concept of "pure Korean blood" remains in the DPRK psyche. Therefore having a child who is not "*100 per cent*" Korean makes a woman "*less than human*".[558]
- One witness gave testimony to the Commission about the abuse a pregnant woman received before being forced to abort her pregnancy. At the Musan County detention facility, alongside other verbal and physical abuse, guards cursed a pregnant woman clearly in pain from the abuse, shouting that she was "*carrying a Chinese baby in her womb*".[559]
- One witness saw guards take away the new-born baby of a repatriated mother at the Onsong County SSD detention facility. Moments after the baby was born to the mother in the cell – without medical assistance – guards put the baby in a bucket and took it away saying "*the baby is not human*" and "*[it] does not deserve to live because it is impure*".[560]
- Another witness described to the Commission seeing officials at an SSD detention facility in Hoeryong force chemicals into the vagina of a pregnant woman to encourage an abortion. Whilst doing so, the officials said they must exterminate "mixed-race people".[561]
- Mr Kim Young-hwan, who works with former DPRK nationals, including providing assistance to them in China, testified before the Commission at the Seoul Public Hearing:

  "*Forced abortion and forced murder of new-borns are carried out. North Korean defectors who got pregnant in China, if they are repatriated back, they are blamed for carrying the child of a Chinese national and they are put to receive forced abortion or, if they give birth, that child is killed.*"[562]

427. The disdain for children who are not of pure Korean blood and ethnicity is believed to exist in DPRK society in general, not just among authorities and security agencies. According to the testimony of a former SSD official, forced abortions are therefore also conducted for supposedly benevolent reasons, saving a woman from later discrimination for having an "impure" child.[563]

428. Forced abortions are also intended as an additional punishment for women who have left the DPRK and became pregnant in China.

- One witness told the Commission that women are subjected to forced abortions as a form of punishment for treason (i.e. having gone to China).[564]
- A former Commissioner of the Women's Group, who herself witnessed (in her capacity as Commissioner) a forced abortion upon a repatriated woman, testified that there is a policy on forced abortions targeting women repatriated to the DPRK. She stated that women who become pregnant in China, irrespective of the father's ethnicity, are subjected to forced abortion without exception. However, this was not done in hospitals. Instead, security agents beat pregnant women and subjected them to arduous and strenuous work. The witness personally saw a pregnant woman

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[558] TBG031.

[559] TGC001.

[560] TJH028.

[561] TLC009.

[562] Seoul Public Hearing, 24 August 2013, afternoon (00:28:20).

[563] TBG031.

[564] TAP003.

being beaten by an SSD agent in a *jipkyulso* in a northern province sometime in 2007. Security agents were calling the pregnant detainee names, and saying that the offspring of Chinese men cannot be born in the DPRK. The agents verbally and physically abused her, and she miscarried immediately. The foetus was discarded.[565]

- Another former official testified, that while there were no specific instructions to forcibly abort the pregnancies of repatriated women (in the years 1996-2000), the investigators who did so were not punished but complimented.[566]

429. Witness testimony also reveals that women taken to holding centres (*jipkyulso*) and interrogation and detention centres (*kuryujang*, SSD facilities) can be forcefully subjected to blood testing.[567] According to an expert who works with people who have fled from the DPRK, blood tests are now routinely conducted on all repatriated women. The suggested purpose of this is to screen for HIV and pregnancy.[568]

430. The following methods are used to inflict forced abortions upon victims:

1. Inflicting trauma to the uterus through physical force to induce expulsion of the foetus; such as beating, kicking, and otherwise traumatizing the pelvic and abdominal areas of a pregnant woman.[569] The infliction of such trauma can also cause internal bleeding and damage to organs.

2. Forcing pregnant women to engage in heavy physical work and other activity, accompanied by poor nutrition, to induce pre-term labour or premature separation of the placenta from the uterus.[570]

3. Use of chemicals and abortifacient herbs, generally inserted into the vaginal cavity by hand to terminate the pregnancy or to induce expulsion of the foetus.[571] The use of herbs or chemicals in this manner can have serious side effects as they can be absorbed easily into the bloodstream (causing organ failure or even death).

4. Forceful physical removal of foetus by reaching or poking into the vagina with a tong-like apparatus or sharp object to either remove the foetus from the woman's body or cause its expulsion.[572] This type of forced abortion can cause scarring, adhesions, internal damage and infertility.[573]

5. The administration of drugs (orally or via injection) to kill the baby in utero[574] and/ or artificially induce expulsion of the foetus, or depending on the stage in the pregnancy, to induce premature labour.[575] The prematurely born child usually cannot survive by itself without medical assistance and dies shortly thereafter. In some cases, guards have killed babies prematurely induced.[576] These cases are considered forced abortions as the action of the

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[565] TAP007.

[566] TBG031.

[567] TAP010, TBG018, TSH015, TSH050.

[568] Submission to the Commission: Confidential source.

[569] TAP003, TGC001, TSH039, TSH049, TJH032, Ms P, Seoul Public Hearing , 21 August 2013, afternoon.

[570] TAP007, TSH015, TSH050.

[571] TLC009.

[572] TAP010, TSH018, TSH030.

[573] TAP010.

[574] TLC008.

[575] TAP010, TBG018.

[576] TAP010.

guards to artificially induce the baby terminates the pregnancy (against the will of the mother), and the baby subsequently dies without further intervention by any person (even though it may have been alive momentarily).

6. Surgical removal of the foetus[577] ("sympathy abortions" carried out in China – see below) conducted by medically trained personnel (generally in a hospital or other medical facility).

- Ms Jee Heon A, having witnessed forced abortions and infanticide upon other repatriated women in an earlier period of detention after repatriation, was herself subjected to a forced abortion in detention after her third repatriation. At the Seoul Public Hearing, she testified before the Commission: "*I was found to be pregnant, three months pregnant at that time. I was so surprised that I was pregnant. And I remember in 1999 when the baby was born in the prison, I thought I was going to go through the same thing [having to watch the baby subjected to infanticide], but they said that they were going to make me get an abortion, and what they meant by abortion was instead of giving me a shot, they make me lie on a table, and get a surgery right away. There was a lot of bleeding … I could not stand straight.*" [578]

  Ms Jee was subjected to the forceful physical removal of the foetus in her womb by someone reaching into her uterus whilst she was restrained on a table. The bleeding was so profuse it gave rise to concerns of internal damage. Afterwards, she was immediately sent to a *kyohwaso*. She suffered so much bleeding that the responsible officer decided to release her from the *kyohwaso*.

- Another witness told the Commission that she was well aware that she would be subjected to forced abortion as she was pregnant. However, she thought she would be made to undergo a similar procedure experienced by her cellmate who had been nine months pregnant. The cellmate was apparently given an injection to induce labour, and when the baby was delivered, it was suffocated to death by having its face turned down. However, the witness was subjected to a forced abortion without anaesthetic, by a woman using her hands and rusty equipment. The witness described screaming in pain during the operation and being told to stop screaming. Afterwards, she saw blood everywhere and the aborted foetus in a bucket. She became infertile after this. On the same day as the forced abortion, she was made to work even though she was suffering from back pains and cramps. She remained in the *jipkyulso* for three months before she was transferred back to her home town for her sentence to be further determined.[579]

431. A witness before the Commission saw seven pregnant women at Chongjin *jipkulso* subjected to forced abortions. The women were made to lie down and given an injection to induce a miscarriage. [580]

432. When a repatriated mother is able to carry her baby to full term, she is not provided with any medical assistance before, during or after childbirth. However, other women in the same cell are able to assist the mother in labour through to the birth of her child. In most cases, guards at the detention facilities in which repatriated persons are held force either the mother[581] or a third person[582] to kill the baby by drowning it in water[583] or suffocating it by

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[577] TBG017.

[578] Seoul Public Hearing, 20 August 2013, afternoon (03:09:45).

[579] TAP010.

[580] TBG018.

[581] Ms Jee Heon A, Seoul Public Hearing, 20 August 2013, afternoon.

[582] TBG018, TLC018.

holding a cloth or other item against its face or putting the baby face down so that it cannot breathe.[584]

- Ms Jee Heon A also recalled watching a mother forced to suffocate her child moments after giving birth: *"...there was this pregnant woman who was about 9 months pregnant. She worked all day. The babies who were born were usually dead, but in this case the baby was born alive. The baby was crying as it was born; we were so curious, this was the first time we saw a baby being born. So we were watching this baby and we were so happy. But suddenly we heard the footsteps. The security agent came in and this agent of the Bowibu said that... usually when a baby is born we would wash it in a bowl of water, but this agent told us to put the baby in the water upside down. So the mother was begging. 'I was told that I would not be able to have the baby, but I actually got lucky and got pregnant so let me keep the baby, please forgive me', but this agent kept beating this woman, the mother who just gave birth. And the baby, since it was just born, it was just crying. And the mother, with her shaking hands she picked up the baby and she put the baby face down in the water. The baby stopped crying and we saw this water bubble coming out of the mouth of the baby. And there was an old lady who helped with the labour, she picked up the baby from the bowl of water and left the room quietly. So those kind of things repeatedly happened. That was in the detention centre in the city of Chongjin of Hamgyong Province."*[585]

- Based on the testimonies his organization collected from women, Mr Kim Young-hwan also provided testimony at the Seoul Public Hearing about the horror of mothers having to watch their children being killed:

  "*... if the child is born, then the child is put to death immediately. Sometimes, the mouth and the nose are covered with a wet cloth leading to the suffocation of the baby. We have several testimonies. Sometimes, the baby is put face down, so that the baby cannot breathe, and this is one way of killing the baby, and within a few minutes or within a few hours, the baby would cry in pain because it cannot breathe. Regardless, the mother of the baby is made to witness this next to [her] baby.*"[586]

433. The Commission finds that pregnant women are detained in contravention of domestic law, which prohibits the detention of women three months before or seven months after giving birth.[587] Moreover, in the course of forced abortions and infanticide, women are in fact not afforded any kind of protection under the law.[588]

434. Forced abortions violate the women's right to physical integrity and security of the person as well as their sexual and reproductive rights.[589] Directed against women's reproductive capacity, forced abortions and infanticide also entail discrimination and persecution on the basis of gender. The forced abortions and infanticide carried out by DPRK officials, which are based on gender and racial discrimination, regularly subject

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[583] TLC018.

[584] TBG018, TSH051.

[585] Seoul Public Hearing, 20 August 2013, afternoon (02:42:00).

[586] Seoul Public Hearing, 24 August 2013, afternoon (00:30:50).

[587] The People's Safety Enforcement Law (1992), article 50 clause 3.

[588] See section IV.E for further on this.

[589] See Special Rapporteur on Violence against Women, its Causes and Consequences, E/CN.4/1999/68/Add.4, paras. 45, 49. See also Beijing Platform for Action, adopted at the Fourth World Conference for Women (1995), para. 115; Committee on the Elimination of Discrimination against Women, General Recommendation 19, A/47/38, para. 22; CEDAW/C/CHN/CO/6, para. 32.

women to a level of intentional and severe mental and physical suffering that satisfies the threshold of torture as defined under article 7 of the ICCPR.[590] The documented cases of infanticide constitute particularly egregious cases of extrajudicial killings in violation of article 6 of the ICCPR.

(f) Forced repatriation and *refoulement* of citizens of the Democratic People's Republic of Korea by China

435. Despite the torture, arbitrary imprisonment and other gross human rights violations awaiting forcibly repatriated persons in the DPRK, China pursues a rigorous policy of forced repatriation of DPRK citizens who are in China without proper documentation.

436. Numerous witnesses testified that they were arrested by Chinese officials when it was discovered that they were DPRK nationals and could not present valid papers. In a number of cases, there seemed to be targeted operations to find and apprehend DPRK nationals. Humanitarian activists who worked in the provinces bordering China also indicated that China encouraged its population to denounce DPRK nationals and punished those who harboured them. In March 2013, the Chinese police was reported to have issued a crackdown order in Yanbian on illegal border crossing. This included monetary rewards for information provided to find illegal border crossers, as had apparently been done on previous occasions. The faster the information is provided and the greater the number of illegal border crossers that the information relates to, the higher the supposed reward.[591] Reportedly, the Chinese security agency further hired DPRK citizens to inform on other DPRK nationals planning to flee to the ROK.[592]

437. China also seems to have been taking active measures to ensure that DPRK nationals cannot get access to foreign embassies and consulates to seek protection or asylum.[593] In the

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[590] Article 1 of the Convention against Torture, which also informs the definition of torture under ICCPR, article 7, defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. On the recognition of forced abortion as an act of torture see the reports of successive Special Rapporteurs on Torture and other Cruel, Inhuman and Degrading Treatment, A/HRC/22/53 (2013), para. 48; A/HRC/7/3, para. 69. See also Human Rights Committee, General Comment No. 28, CCPR/C/21/Rev.1/Add.10, para. 11.

[591] Life Funds for North Korean Refugees, "China Promises Bounty on All NK Refugees Turned In", 31 April 2013. Available from http://www.northkoreanrefugees.com/2013-03-bounty.htm.

[592] KINU, *White Paper on Human Rights in North Korea* (2013), p. 46.

[593] In 2002, the Chinese Ministry of Foreign Affairs apparently issued a letter to foreign embassies following events which "occurred in succession [where] third country nationals intruded into foreign embassies and consulates in China … directly endanger[ing] the security of the embassies and consulates concerned and disturb[ing] their routine work [as well as] provoked Chinese law and affected the public security and stability of China." As such, in response to requests made to it by "many foreign embassies and consulates in China" and "in conformity with the interests of both sides", a series of measures were taken by the Chinese authorities to protect the security of foreign diplomatic and consular representing institutions. The letter also states that, "According to the principle of international law that embassies and consulates has no right of asylum, the Chinese side also wishes embassies concerned to render cooperation and inform the Consular Department of Chinese Ministry of Foreign Affairs in case the illegal intruders were found, and hand over the intruders to the Chinese public security organs." Human Rights Watch (HRW), "The Invisible Exodus: North Koreans in the PRC", November 2002, pp. 29-30. Available from http://www.hrw.org/reports/2002/northkorea/norkor1102.pdf. See more on the successive attempts

case of preventing access to the ROK Embassy or Consulates, this meant DPRK nationals are not able to avail themselves of the opportunity to seek protection from the ROK and be considered for ROK citizenship in accordance with the ROK Constitution and laws.[594]

438. Those apprehended are usually detained in police stations or detention facilities in military installations. Repatriated persons generally report that their treatment in Chinese detention was better than the systematic and gross human rights violations experienced in the DPRK. However, instances of serious human rights violations involving sexual and physical violence by Chinese guards have been reported.

- In 2006, one witness was incarcerated in a detention facility in Tumen, China for seven months. During this time her interrogators beat her and other DPRK citizens with their hands, chairs and clubs in order to obtain the name of the broker who took them to China. Upon her forced repatriation to the DPRK, she was subjected to even worse torture and sexual violence leading her to take the view that "Chinese prisons are heaven compared to DPRK prisons".[595]
- Another witness, who was arrested within a week of reaching China, was initially sent to an army prison in China. She and other captured women from the DPRK were stripped of their clothes and searched. Female guards conducted the search, but two male guards were also present. Some of the women, who refused to strip naked, were verbally abused and beaten with clubs until they complied.[596]
- A witness was arrested in Shanghai after he unsuccessfully attempted to seek protection from the ROK Consulate. In detention, when he tried to deny being from the DPRK, two Chinese guards turned him upside down against a wall and kicked him in the head. This made him admit to his nationality.[597]
- Another witness was lured to China on the pretext of working on a farm to earn money but was trafficked and sold to a Chinese man who held her captive for three years. She got arrested after escaping from her Chinese "husband". At that time, she was seven months pregnant. She told the Commission that sexual violence was rife in the Chinese detention facility: *"All the guards would hit your breasts as you walked by. If someone who is more attractive is caught, then they would be treated as a sexual play thing. Some girls get pregnant in the prison."* The witness herself was raped by a guard in a detention facility in Tonghua County. She also saw

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made by DPRK nationals to access foreign embassies and consulates in China leading to the issuance of the letter at pp. 28-29 of the same HRW report. Additional cases of DPRK nationals who were seized by Chinese officials as they tried to find protection in diplomatic and consular premises are reported in North Korea Freedom Coalition, "'The List' of North Korean Refugees and Humanitarian Workers seized by Chinese authorities", 2013. Available from http://www.nkfreedom.org/UploadedDocuments/THELIST2013_English.pdf.

[594] Under a combination of the provisions in the ROK Constitution, the ROK Nationality Act and the Protection of North Korean Residents and Support of their Settlement Act, DPRK nationals are in fact entitled to ROK citizenship with some exceptions (namely, those who have committed serious non-political crimes). See Elim Chan and Andreas Schloenhardt, "North Korean Refugees and International Refugee Law", *International Journal of Refugee Law*, vol. 19, No. 2 (2007), p. 19. The Settlement Act, article 3 further provides that the Act shall only "apply to residents escaping from North Korea who have expressed their intention to be protected by the Republic of Korea" while article 7 of the same Act sets out the procedure for invoking such protection which includes applying "for protection to the head of an overseas diplomatic or consular mission". (See HRW, "The Invisible Exodus: North Koreans in the PRC", pp. 30-31 on ROK policy).

[595] TBG013.

[596] TJH028.

[597] TJH037.

guards taking away other women who were then raped and brought back to the cell. Guards also placed their hands in women's vaginas to seek money they could steal.[598]

439. Those apprehended might be in detention in China for any length of time from a few days to several months, depending on how long their interrogation takes. Only when a sufficient number of DPRK citizens has been gathered are they taken by force across the border and handed over to the DPRK authorities.

440. Witness testimony also indicates that Chinese officials tasked to implement the repatriation policy are normally aware of the human rights violations that repatriated persons face in the DPRK. In some cases, officials even seemed to show sympathy towards captured DPRK citizens, but had to comply with the repatriation policy nonetheless. Officials appeared to be aware of the conduct of forced abortions on pregnant women repatriated from China.

- One Chinese officer of Korean ethnicity told one witness that he was often so distressed over the numerous people who are repatriated that he ended up berating those who were facing repatriation for allowing themselves to be caught.[599]
- A witness had observed a guard at a detention centre in China suggesting to a pregnant woman to have an abortion in China instead of being subjected to forced abortion once repatriated to the DPRK. The witness who saw the pregnant woman later no longer carrying a child concluded that it was probably "*better for her to have it in China, as the sanitary conditions are much better.*"[600]

441. In 2005, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and five other Special Rapporteurs of the Human Rights Council conveyed concerns about forced repatriations from China since "Democratic People's Republic of Korea citizens face detention under cruel, inhuman and degrading conditions, ill-treatment and torture as well as, in extreme cases, summary execution in the Democratic People's Republic of Korea".[601] In response, the Chinese Government assured the Special Rapporteurs that they guarantee the lawful rights and interests of foreign citizens within its territory.

442. Contrary to these assurances, China has maintained its policy of forcibly repatriating DPRK nationals. In May 2013, nine DPRK citizens, aged 15-23 years, were forcibly repatriated by the Lao People's Democratic Republic via China. Both the High Commissioner for Human Rights and the High Commissioner for Refugees conveyed their concern to the Governments of China and Laos, reminding them of the prohibition on *non-refoulement* under international human rights and refugee law.[602]

443. The obligation not to expel, return (*refouler*) or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture emerges from article 3 of the Convention against Torture, ratified by China on 4 October 1988. Contrary to article 33 of the Convention Relating to the Status of Refugees, to which China is also a State party, repatriation typically also places DPRK

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[598] TSH029.

[599] EJH003.

[600] TBG017.

[601] See A/HRC/4/34/Add.1, para. 129.

[602] OHCHR, "Press briefing notes on North Korean defectors and Papua New Guinea", 31 May 2013, available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13390&; UNHCR "UNHCR chief calls on states to respect non-refoulement after North Koreans deported from Laos", 30 May 2013, available from www.unhcr.org/51a7510b9.html.

citizens in a position where their life or freedom would be threatened on account of their religion and/or membership of a particular social group or holding of a political opinion. The obligation not to expel persons to other states where there are substantial grounds for believing that the person would be in danger of being subject to gross human rights violations also emerges from the requirements of customary international law.

444. The Office of the United Nations High Commissioner for Refugees (UNHCR) has a small presence in Beijing serving the East Asia and the Pacific sub-region. It conducts refugee status determination under its mandate for individual asylum seekers as a temporary measure until the Government of China creates its own state structures. The Commission finds that China disregards its agreement with UNHCR to allow UNHCR personnel unimpeded access to asylum seekers including those from the DPRK.

445. When the Standing Committee of China's Nationa! People's Congress adopted the new *Administration Law on Entry and Exit* in July 2012, it added to domestic law for the first time provisions regarding the treatment of refugees (article 46). The new rules were to enter into force in July 2013, and were expected to result in the adoption of a comprehensive national refugee framework, including provisions relating to refugee children.[603] The Commission is not aware of any progress in the effective implementation of this law in accordance with China's international obligations under the Refugee Convention, in particular in relation to DPRK nationals.

446. From the body of testimony and other information gathered by the Commission, it finds that many of the DPRK citizens who cross the border into China do so owing to a well-founded fear of being persecuted for reasons of religion or political opinion. For others, persecution takes the shape of severe socio-economic deprivation because they are members of a low *songbun* social class. In addition, persons forcibly repatriated to the DPRK are regularly subjected to torture and arbitrary detention and, in some instances, also to rape, enforced disappearance, summary execution and other gross human rights violations. They are also likely to be considered as having committed "treason against the Fatherland by defection" under article 62 of the Criminal Code or under another of the vaguely defined and political "anti-state" or "anti-people" crimes.

447. The Commission therefore finds that many DPRK nationals, deemed by China as mere economic illegal migrants, are arguably either refugees fleeing persecution or become refugees *sur place*,[604] and are thereby entitled to international protection.

448. There are also reasonable grounds indicating that Chinese officials provide the DPRK authorities with information about persons from the DPRK whom they apprehend, including information about the circumstances and place of their apprehension and contacts they had in China.

- Mr Kim Song-ju, who spoke at the London hearing, said: *"When I was repatriated to the DPRK to China, the DPRK agency had already obtained the report provided by the Chinese police, because my escape was planned towards South Korea, if I said anything against the report provided by China, I would be hit; I would be beaten again."*[605]

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[603] UNHCR submission to China's UPR, March 2013. Available from http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRCNUNContributionsS17.aspx.

[604] For further information on refugees *sur place*, see UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees", January 1992, paras. 94-96.

[605] London Public Hearing, 23 October 2013, session 1 (00:55:01).

449. A former official, who worked on border security, stated that when the Chinese authorities repatriate DPRK nationals, they also provide the DPRK authorities with documentation regarding the living circumstances of the repatriated persons in China. The documentation indicated whether the DPRK nationals had simply lived with their "spouses" or have had contact with Christians or ROK nationals including with ROK intelligence agents. Such information was used by the DPRK authorities in determining the fate of those repatriated persons. Those believed to be working with ROK intelligence were executed in the DPRK, whilst those involved with Christian missionaries would be sent to DPRK prison camps without trial.[606] The same witness also indicated that Chinese officials used differently coloured stamps on the documentation handed over to the DPRK authorities based on whether the repatriated persons planned to reach the ROK or not.[607] Another witness also indicated that the Chinese authorities provided their DPRK counterparts with a document concerning her case upon handing her over.[608]

450. A humanitarian activist, who worked extensively on a clandestine basis in both China and the DPRK and spoke to the Commission, indicated that Chinese authorities provided information to their DPRK counterparts and might receive deliveries of lumber in exchange for this information.[609]

451. The reported exchanges of information seem consistent with a protocol concluded between the DPRK's Ministry of State Security and China's Ministry of Public Security in 1986 and revised in 1998. Its stated purpose is to maintain national security and social order in the border areas between the DPRK and China. Article 5 of the protocol sets out the agreement for mutual cooperation "on the issue of handling criminals". It provides, among other things, for each side to be informed of any danger regarding people who disrupt national security and violate social order escaping into the other's side of the border. Both sides are to provide the other any information or materials received regarding the safety and social order of the other's side border.[610]

452. In a letter dated 16 December 2013 from the Chair of the Commission addressing the Chinese Ambassador in Geneva, the Commission raised the above concerns with China. The Commission particularly expressed its concern regarding China's continued policy of repatriating DPRK nationals without affording them the opportunity to have their refugee status determined. This is carried out despite many of them having crossed the border into China owing to a well-founded fear of being persecuted for reasons of religion, and/or membership of a particular social group or political opinion. The Commission also highlighted how persons forcibly repatriated to the DPRK are found to be regularly subjected to torture and arbitrary detention and, in some instances, also to rape, enforced disappearance, summary execution and other gross human rights violations. The Commission further informed the PRC of numerous allegations of forced abortions and infanticide regarding children believed to have been fathered by Chinese nationals. [611]

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[606] TJH015. See section IV.A.4.

[607] This description is consistent with testimony reportedly put forward by other former DPRK Citizens. See Suzanne Scholte, Testimony to Hearing before the Congressional-Executive Commission on China, "China's Repatriation of North Korean Refugees", 5 March 2012, p. 6.

[608] TBG018.

[609] EJH003. See also Roberta Cohen, Washington Public Hearing, 31 October 2013, afternoon.

[610] Ministry of Foreign Affairs of the People's Republic of China, *Zhonghua Renmin Gongheguo bian jie shi wu tiao yue ji. Zhong Chao juan* (Compilation of Treaties on Border Affairs of the People's Republic of China: Sino-North Korea Volume), pp. 388-389 (Beijing, World Affairs Press, 2004) (Unofficial English translation).

[611] See Annex II of the Commission report (A/HRC/25/63).

453. The Commission further sought clarification regarding any measures taken by China to ensure that repatriated persons would not be subjected to such violations upon their return to the DPRK. In reference to the border control-related agreements concluded between China's Ministry of Public Security and the DPRK's Ministry of State Security, the Commission conveyed its concern about allegations of information exchange which further aggravates the risk that repatriated DRPK nationals would be subject to torture, enforced disappearance and summary execution, in particular where information conveyed relates to alleged contacts that DPRK citizens may have had with Christian churches or ROK nationals or any attempts they may have made to travel onwards to the ROK.

454. In its letter of reply dated 30 December 2013, China reiterated its position that "DPRK citizens who have entered China illegally do it for economic reasons", and that they are not refugees. Accordingly, their "illegal entry not only violates Chinese laws, but also undermines China's border control". As such, China claimed that it "has the legitimate rights to address those cases [including other illegal and criminal acts committed by some] according to law". It also claimed that, since DPRK citizens who have been seized by the Chinese public security and border guard authorities have repeatedly entered China illegally, the allegation that repatriated DPRK citizens from China face torture in the DPRK is therefore not true.[612]

(i) *Trafficking in women and girls*

455. Trafficking in persons, as defined by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons,[613] remains one of the gravest human rights abuses against DPRK women and girls.

456. Because of tight border control, persons who wish to cross the border typically have to rely on organized help to make it across undetected. There is a spectrum of persons engaged in such activities. On the one hand of the spectrum are humanitarian activists who are driven by a motivation to help those wishing to flee the DPRK. There are also commercial people smugglers, generally referred to as "brokers", who help those who voluntarily wish to cross the border in exchange for payments that reach several thousand US dollars according to more recent accounts. On the dark end of the spectrum, there are also traffickers, generally disguised as brokers, who target mainly women and girls and apply force or deception to bring their victims into situations of exploitation.

457. The Commission estimates that a large percentage of women and girls who cross the border from the DPRK to China unaccompanied become victims of trafficking in persons, mainly for purposes of exploitation in forced marriage and forced concubinage. A number of women and girls are also forced to work in prostitution under conditions of control by others.

458. Article 6 of CEDAW obliges Member States to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of

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[612] See Annex II of the Commission report (A/HRC/25/63).

[613] United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, 2000. The protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

prostitution of women". Article 34 of the CRC further requires states to protect children from sexual exploitation. The Commission finds that both the DPRK and China are failing to provide these protections to vulnerable women and girls from the DPRK in China. The Commission received information that both China and the DPRK apply stiff criminal sentences to apprehend traffickers, including in the DPRK's case the death penalty. However, China's *refoulement* practice and the DPRK's torture and punishment of repatriated persons effectively render victims without protection. Most victims are afraid to approach the authorities for help and would rather endure their current situation than the gross human rights violations they may face in the DPRK.

459. In 2005, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and four other Special Rapporteurs informed China that traffickers systematically target DPRK women, who are usually hungry and desperate. The traffickers did so by approaching the women in the border region and promising them food, shelter, employment and protection before forcing them to "marry" or become the concubines of Chinese men. The "marriage" is not a legally approved relationship, but a de facto status which was forced on women who have been trafficked or paid for, and who are consequently not under the protection of the law. The Special Rapporteurs on violence against women, its causes and consequences emphasized that the Chinese practise forced repatriation made the women extremely vulnerable to trafficking and that traffickers are well aware of this policy and often manage to subdue their victims by threatening to report them to the authorities if they resist.[614] In a detailed response, China acknowledged that offences involving trafficking in women and children were starting to occur in China and emphasized that the Chinese public security authorities took the issue very seriously and cracked down on illegal trafficking.[615] However, the response by China did not address the causal links between the illegal repatriations and human trafficking. The Special Rapporteurs conveyed the same concerns to the DPRK, which dismissed them as "fabricated contents". [616]

460. The reasons for the large numbers of women leaving the DPRK in comparison to men are varied. Women are pushed into leaving due to the difficulties that women particularly face inside the DPRK, especially during times of famine, as well as ongoing challenges as a result of the political system. Furthermore, women have relatively more freedom of movement and can go undetected for longer periods as surveillance on men is generally stricter (see above). Opportunities for women to leave the DPRK are also greater as brokers are more willing to assist the travel of a woman with the intention of selling her to a Chinese household, or into prostitution once in China, with or without the woman's knowledge and/or consent. As the primary caregivers in Korean society, women are also more likely to go in search of food or economic opportunity to sustain their families. A final potential reason is that the human rights situation within the DPRK is worse for women,[617] causing more women than men to flee from abuse and human rights violations.

461. There is also a demand for unmarried women in Chinese society.[618] As the Chinese economy grew, and its cities developed, urbanization began. The nation's industries,

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[614] See A/HRC/4/34/Add.1, paras. 125-129.

[615] Ibid., para. 144.

[616] Ibid., paras. 215-218.

[617] See section IV.B for more information about gender discrimination, and section IV.D for details of the gendered impact of violations of the right to food.

[618] National Human Rights Commission of Korea, *Fact-finding Study on Human Rights Violations against North Korea Refugee Women in the Process of Flight and Settlement* (Seoul, 2009), pp. 134-135.

thriving after the market economy was introduced, provided many opportunities for rural women to work in the cities.[619] The migration of rural women to work in the cities, coupled with the decrease in the women to men ratio associated with the one child policy, has created a gender-imbalance amongst working age adults in the Chinese countryside.[620]

462. DPRK women unaccompanied by their families usually travel to China in a number of ways. Some seek out a broker to help them escape and arrange for relatives abroad to pay the broker. Brokers also approach women in the marketplace inside the DPRK offering such services. Women who do not have options to make payment may also agree to enter into an arranged unofficial "marriage" with a Chinese man and the broker will extract payment from that man. Others are lured by deceptive promises that they can "work off" their brokerage fee in China, where the broker would provide them work in a restaurant or factory. Once in China, dishonest brokers reveal themselves as traffickers and make arrangements to sell the woman instead of connecting her with the persons or work they had agreed to undertake.

- One witness was lured to China on the pretext of working on a farm, but found herself in the hands of traffickers: *"In 2003, a broker who came regularly to the market convinced me I could work in China and earn a lot of money growing ginseng. Brokers came on a daily basis to the market to get women out of the DPRK. I know a lot of women who left this way. I went with the broker on the impression I would be going to a farm, but once in China I realized I was being trafficked, and sold by the broker. I was with 8 other women, when we got to [...] location in China 4 or 5 men were waiting for us in a car. I later learnt I was sold for 8,000 North Korean won."*[621]

463. Some women are also approached by a trafficker disguised as a broker who convinces the women that they can obtain well-paid agricultural work in another province in the DPRK, and then agree to travel to the province with them. Due to the restrictions on the freedom of movement in the DPRK, some have never seen outside their own village or city, let alone other provinces, so victims in this category realize they have been lured to China only after they have been taken to China.

- At the Seoul Public Hearing, the Commission received testimony from Ms C, who had lost her entire family to starvation, and upon becoming ill herself was trafficked to China. Ms C was deceived about an opportunity to earn money in another province of the DPRK and only realized later, when she was taken with two other women to cross a river, that they had in fact crossed the border into China. The DPRK broker who took the three of them across the river then handed them to a Chinese broker who in turn sold her to a Chinese man: "*I was sold to that house. I was not sold as a worker, but in China there were a lot of unmarried men. They were short of women so he bought me to be his wife. So I wasn't paid. In China, at least I didn't starve but I was hungry when I was in North Korea.*"[622]

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[619] National Human Rights Commission of Korea, *Fact-finding Study on Human Rights Violations against North Korea Refugee Women in the Process of Flight and Settlement*, p. 134.

[620] There are an estimated 30-40 million "missing" women in China due to non-medical sex selective abortions: Jing-Boo Nie, "Non-medical sex-selective abortion in China: ethical and public policy issues in the context of 40 million missing females", *British Medical Bulletin*, vol. 98, No. 1 (2011). The Plenum of the 18th Party Congress in December 2013 issued a resolution to ease the one-child policy.

[621] TSH029.

[622] Seoul Public Hearing, 24 August 2013, morning (03:31:16).

- Ms Jee Heon A was lured by traffickers who had told her there was work in another province of the DPRK, but instead took her to China. At the Seoul Public Hearing, she testified before the Commission: "*[A man] told us, me and the girls who lived in my neighbourhood, that we could get money [selling grass] in Gosari [in the DPRK]. I left my 9 year old brother behind. But when we arrived we found that we were in China. … We were taken to a house and there were five traffickers there. They were all men inside a green house. We spent about a week there. … We had no idea that the brokers were going to sell us to old Chinese men who were unable to get married.*"[623]

464. Once in China, regardless of the terms on which the women went with the trafficker, they are forced into one of two options, to "marry" a Chinese man or work in sex-related industries. In China, these women and girls become vulnerable as they have to hide from the Chinese police and are unable to access information and services due to the language barrier. Traffickers capitalize on this vulnerability and put women under pressure by systematically using the threat of forced repatriation to their advantage and telling the women that because their Chinese is poor and they have no legal standing in China, they will not be able to get a job or move around freely (including attempting to travel overland to the ROK). Traffickers pose the options of cohabitation with Chinese men and sex-work as the only way the women and girls can have a safe haven and learn Chinese "for a year or so" before attempting to travel to the ROK. Traffickers may also tell the women that they now owe a certain amount of money, and as they cannot work in paid employment, they must be sold to a Chinese man in order to pay the debt, or engage in sex work to repay the debt. In extreme cases, traffickers may hold women against their will in locked locations until they agree to either "marry" a Chinese man or engage in prostitution. In some circumstances, the "broker" may arrange the forced marriage or enforced prostitution themselves. However, the women are usually transferred to the custody of an intermediary trafficker. Those who choose to do sex work are sold to agents in sex industries, rather than being able to conduct their own job search.[624]

- At the Seoul Public Hearing, the Commission received testimony from Mr Kim Young-hwan, who provided assistance to DPRK nationals in China. Mr Kim told the Commission about the established network of traffickers that arose as a result of the food crisis and the DPRK's policies:

  "*If you look at the human trafficking pattern that occurred in the past, there are people who look for these women inside North Korea and there are brokers in China so these people who collect these North Korean women in North Korea, after they collect women they send them to China to the brokers [traffickers] and in China, these brokers [traffickers] sell these women to the Chinese in return for money. … Trafficking peaked six or seven years ago. Women are victimized through human trafficking. Some are aware they are being sold [and go through with it] so that they can provide food for their family, but some are lied to, are lured to be sold.*"[625]

- One witness explained that she knowingly sought assistance from North Korean traffickers to go to China as she and her daughter were starving. The witness, who was about 27 years of age at that time, was sold to a Chinese man in his 50s. When she refused sex with the man after she first arrived, he threatened her with a knife.[626]

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[623] Seoul Public Hearing, 20 August 2013, afternoon (02:27:15).

[624] Good Friends: Centre for Peace, Human Rights and Refugees, "Alternative NGO Report on the Convention on the Elimination of All Forms of Discrimination Against Women First Periodic Report of the Democratic People's Republic of Korea", June 2005, p. 11. Available from http://www.refworld.org/pdfid/46f146320.pdf

[625] Seoul Public Hearing, 24 August 2013, afternoon (00:33:45).

- A witness, who works with DPRK nationals in China, said that a large number of forced marriages occur due to China's one child policy and ensuing sex ratio imbalance. The witness has also intervened in several cases where DPRK women were trafficked into prostitution. He further stated that while China prohibits trafficking, related laws are not being enforced strictly.[627]

465. Women who have travelled to China without the assistance of a broker, or who have escaped from traffickers or the men who have paid for them, are vulnerable to being picked up by traffickers and (re-)sold into "marriages" or sex work.

- For example, one witness, having escaped from her traffickers, went to a telephone service provider to make a call. Whilst trying to use the telephone, another trafficker came and took her, she suspects as a result of the telephone service manager contacting the trafficker.[628]
- Ms Jee Heon A further testified about being captured on the streets in China by traffickers after having escaped from the Chinese police. "*Every place we went, we met brokers. If we noticed that … they looked like North Korean men, they were brokers. They asked us where we were from in Chinese, but we could not answer them because they were speaking to us in Chinese. Then they would switch back to North Korean, and we were asked if we were from North Korea. … We got arrested again, we met brokers again. And by the brokers, we were sold at Yun Yun Sung. I was sold for 20,000 or 30,000 Chinese yuan.*"[629]
- Mr Kim Young-hwan also spoke about the activities of these "human hunters", actively looking for DPRK women in China to capture and sell against their will: "*There are these 'human hunters' that live around these border areas that target North Korean women. These 'human hunters' wait for the women to cross the border and they catch [them] and traffic them in China.*"[630]

466. Women are usually sold a minimum of two times before being sold into forced marriages, as traffickers buy and sell the women from each other. The trafficker bringing the woman to the DPRK, or picking her up in the DPRK, usually sells the woman to an intermediary trafficker who facilitates the "marriage" by reselling the woman to a rural family. Often this process involves holding women in locked locations for prospective buyers ("husbands") to inspect them.

- Ms P chose to go to China to earn a living there as the food situation was so dire in the DPRK. However, she ended up being trafficked. The Commission heard how she found herself transferred from one person to another before being sold to a Chinese man with whom she lived with for about seven years before she was arrested and repatriated: "*[At the time crossing border was not easy], but at least it is better than just doing nothing and dying in North Korea. I thought at least if I went to China I would have the means to survive. For example, at least earn some money, but things did not turn out the way that I had expected … We were sold to*

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[626] TAP010.
[627] EJH003.
[628] TSH015.
[629] Seoul Public Hearing, 20 August 2013, afternoon (02:30:46).
[630] Seoul Public Hearing, 24 August 2013, afternoon (00:35:25).

China, it happened in North Korea. … I did not know I was being sold. People just handed me over to people."[631]

- In London, Ms Park Ji-hyun told the Commission of the time her mother, who had been struggling to find somewhere for them to live in China, encouraged her to get married in China only to learn that she was actually being sold. Ms Park testified about being entrusted to a Chinese woman to find her a "husband": "*I stayed with a Chinese woman for about a month to arrange the "marriage". I felt like an animal in a zoo as many men came to see me, young and old, to see if I would be a suitable bride.*"[632]

467. Once sold into forced marriages, women have been be forcefully kept at locations (including under lock and key) until they are deemed submissive enough to stay of their own volition and subjected to sexual exploitation. The women are expected to submit to sexual activity and are often subjected to violence if they refuse to have sex with their "husband". In extreme cases, women are also sexually exploited by other occupants of the house such as brothers, fathers and sons. The women are often also subject to forced labour, such as domestic and agricultural work, and often subjected to domestic violence.

- Mr Kim Young-hwan told the Commission, from his experience of working with victims of trafficking in China, about the human rights violations women and girls trafficked in/ into China suffer:

  "… these women are sold to [men in] rural areas in China and are given subhuman treatment. Women who are sold to these rural areas in China suffer from very serious abnormal living conditions. Only 20 to 30 per cent of them said they were able to fare to some extent, but most received inconceivable subhuman treatment. Sometimes they are exploited as sex slaves or are chained '24/7' and detained. Or for example, if this woman was sold to the son, the men in the entire family – the father, the uncle, and the brothers would take advantage of this woman and she would be sexually abused by the men in the entire family."[633]

- A survivor of trafficking informed the Commission:

  "I was sold off to a man with disabilities. Despite having a disability, he beat me often. He did not speak Korean and I did not speak Chinese, we communicated in body language. I was locked inside the house for 6 months and did not know where I was. After 6 months, I was finally able to convince him I would not run away, that I would work, then I was able to leave the house. I was expected to sleep in his bed, and have sex from the first day. I begged every time not to have sex, but was beaten when I tried to resist. He used to hit me with anything until I was bruised and bleeding. I tried not to get pregnant by avoiding sex during my fertile periods by saying I was sick. I do not know if he wanted children because I could not communicate with him. I lived with the man for 3 years, in the same area the other eight women I was trafficked with lived."[634]

- At the Seoul Public Hearing, Ms C gave evidence to the Commission about the treatment she received from the man she was sold to: "*My 'husband' was 11 years*

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[631] Seoul Public Hearing, 21 August 2013, afternoon (01:32:02).

[632] London Public Hearing, 23 October 2013, session 2 (with additional details provided by the witness in a confidential interview).

[633] Seoul Public Hearing, 24 August 2013, afternoon (00:35:49).

[634] TSH029.

older. He was a heavy drinker and whenever he was drunk he would beat me. There was a lot of beating going on."[635]

- In London, the Commission received testimony from Ms Park about the conditions of her "marriage":

  "Two other Korean women were sold to men in the same village; one was shared by two brothers. Although the man had paid for us to marry, I thought I would lead a normal life, but suffered humiliating experiences every day. The villages treat the Korean women like animals, we could not move freely as everyone in the village kept a close eye on us. They would tease us. The family I lived with would not provide sanitary napkins for me because they thought I would run away if I had them. I was forced to work in the rice paddies every day, effectively enslaved to the home."[636]

468. The Commission heard many accounts of vulnerable women who had been forced into "marriages" in the foregoing ways. The phenomenon of forced marriages appears to be quite known in China, at least in the border areas. On some occasions, men who have paid for a trafficked woman or girl, have paid a second time for the same person after she returned to China following forced repatriation to the DPRK.

- One witness was "married" to a Chinese man the first time she left the DPRK for China in 2010. She was later arrested and repatriated to the DPRK in 2011, and after going through interrogation and detention, she managed to escape following a bribe provided by her family. When she fled back to China, she was captured by traffickers and sold again. Upon contacting her first "husband", he paid for her release from her second "husband".[637]

- Another witness and her daughter experienced, on different occasions, being sold to Chinese men after having left the DPRK for China to search for work. The forced marriage of the witness occurred after her daughter's, and it was the daughter's "husband" who paid for the release of the witness from her own "husband".[638]

469. The Commission finds that undocumented DPRK nationals in China remain in constant fear of being detected, arrested and repatriated to the DPRK. They cannot move freely around the country nor access vital services. They live in constant fear of a disgruntled family member or neighbour of their new home tipping off authorities to their existence. This is a particularly prevalent problem for women and girls who have been trafficked into forced marriage or forced concubinage and prostitution under coercive circumstances as they live under the effective control of people who have paid for them and consider them second-class beings.

- One witness spoke to the Commission about the domestically violent man she was sold to. Despite fearing for her life and trying to run away, she could not. She described "*I had to stay with the man for three years. I tried to collect money and leave, but the father of the man with disabilities [i.e. the 'husband'] reported me to the police.*"[639]

- A Chinese Korean man who had moved to the DPRK with his Chinese family during the Cultural Revolution in China provided evidence to the Commission about the experience of living without legal papers in China (his Chinese registration was revoked after living in the DPRK for many years).

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[635] Seoul Public Hearing, 24 August 2013, morning (03:32:10).

[636] London Public Hearing, 23 October 2013, session 2 (with additional details provided by the witness in a confidential interview).

[637] TSH014.

[638] TSH039.

[639] TSH029.

> *"If you are arrested, you are usually held at a police station for two days, then sent to a detention facility. But I was sent to the detention centre in just one day so I was suspicious. I later found out that two of my cousins had conspired to report me, and had gone to the police several times, but had been refused to be heard by police officers there who knew my family. I think I was sent straight to the detention facility so that I could not utilize my connections in the police station to get out. I was held at the detention centre for three months. The Chinese guards sympathized with my position and said to me 'live more inland next time' and 'be careful of people around you'."*[640]

470. Trafficked women and girls suffer severe violations of their human rights, as they are largely subjected to sexual, physical and mental violence, rape and confinement during and after trafficking. They are treated as commodities and suffer inhuman and degrading treatment. Without the protection of the law, DPRK nationals have nowhere to turn when they suffer injustice. Many women in forced marriages suffer from severe domestic violence and fear being killed. They cannot seek the help of the police or state security when they are subjected to domestic violence or become victims of a crime (such as trafficking). Such lack of protection and lack of access to vital services places them in a very vulnerable position, allowing them to be easily exploited.

- A witness explained to the Commission: *"Even if you die in China, you have nowhere to be buried. You have no rights there. Because you are unregistered, even if your 'husband' beats you to death, there is nothing that can be done. If this happens, your friends will take the body and bury it for you. This happened to one of my friends."*[641]

471. In addition to these fears, DPRK nationals in China cannot access basic health services. Women cannot access much needed health services during pregnancy, nor obtain assistance during childbirth or through the post-natal period. Despite being the primary (and often only) caregiver for their children, they cannot take their children for immunizations or other medical needs.

(ii) *Situation of children born to mothers who flee or are trafficked from the Democratic People's Republic of Korea*

472. A 2010 survey by the National Human Rights Commission of Korea gives an estimate of 20,000 to 30,000 children born to women from the DPRK living in China.[642] As the majority of DPRK women in China reside there without permits, their children are unable to be registered upon birth according to Chinese practice. Moreover, many of these children are fathered by Chinese men, including those born in forced marriages or concubinage. They are in fact entitled to Chinese nationality under the Nationality Law.[643] However, most children born to mothers who fled the DPRK are in practice denied this

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[640] TSH049.

[641] TSH029.

[642] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 44, 461.

[643] According to a confidential submission to the Commission, the Chinese Nationality Law provides for any person born in China to have Chinese nationality as long as one or both of that person's parents is a Chinese national. It also provides that any person born in China whose parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality. It is not clear how, if at all, such provisions are implemented in practice particularly in favour of children born to one parent of Chinese national and the other parent being an undocumented DPRK national.

right, because registering their birth would expose the mother's status as an undocumented migrant and make her liable to *refoulement*. These children are therefore effectively rendered stateless. These practices violate article 7 of the CRC, which provides that every child has the right to a legally registered name and nationality.

473. According to its Compulsory Education Law, China provides for nine years of compulsory education to all children living in the country irrespective of nationality or race. However, there is a requirement for children to be entered on a family register in order to be enrolled in school. As submitted by an NGO for the second cycle of China's UPR, "Because of the danger posed to the refugee parent(s) by China's policy of forced repatriation, many children are not entered on the family register, to avoid discovery of the parent. The children are thus unable to receive an education in cases where the school requires the family register for enrolment". The NGO submission noted earlier that "children of Chinese fathers and mothers who are refugees from a neighbouring country (or those of two refugee parents) are in an extremely vulnerable position because of the policy of non-recognition by the Chinese government, which chooses to consider them economic migrants instead."[644]

474. In addition to being effectively stateless and denied basic rights such as health and education contrary to articles 24 and 28 of the CRC, children born to mothers who came from the DPRK also face separation from their mothers if the mother is arrested and refouled to the DPRK. This is contrary to the right of the child not to be separated from his or her parents, unless it is in the child's best interest, under article 9 of the CRC. The Commission is deeply concerned about the welfare of these children.

- At the Seoul Public Hearing, Mr Kim Young-hwan testified before the Commission about the serious situation that children of DPRK women born in China face: "*North Korean women sometimes give birth to children in China, and the human rights of these babies are neglected today. China does not recognize the marriage of Chinese men with North Korean defectors as legal because the protection of these North Korean women is illegal in China, and often the marriages are not registered with the Chinese authorities. Therefore, the birth of these children is illegitimate in China which leads to these children not having access to education and so forth. If the mother, the North Korean woman, is arrested by the Chinese public security and is sent back to North Korea... if the child is separated from the North Korean woman, these children receive no protection or no recognition from the Chinese authorities. There are lot of children like these cases. And these children of North Korean women who have defected are not recognized as legitimate by the South Korean government.*"[645]

475. Reportedly, some women who left the DPRK illegally were able to obtain resident permits after a prolonged stay in China, while in other cases children born to women from the DPRK have also been granted resident permits. Apparently, in some regions, resident permits are attainable through bribery.[646] One witness spoke of her daughter who had a child with a Chinese man. At some point, he purchased a Chinese identity card for her daughter.[647] However, for the majority of women and their children, this is simply not possible.

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[644] Life Funds for North Korean Refugees, "Universal Periodic Review Second Cycle – China – Reference document", March 2013. Available from http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRCNStakeholdersInfoS17.aspx.

[645] Seoul Public Hearing, 24 August 2013, afternoon (00:37:32).

[646] KINU, *White Paper on Human Rights in North Korea* (2013), p. 468.

[647] TSH039.

- When Ms Park Ji-hyun first got pregnant in China by the "husband" she had been forcibly married to, the village head had told her that she would be better off getting an abortion because if she had a child, that child could not be registered properly and would not get proper medical treatment.[648] She explained to the Commission: "*When North Koreans are sold to China and give birth in China, the children cannot be registered officially with the family because in China the register is kept by the mother's name and since North Korean women's children could not be registered properly, they could not go to school, they could not have any individual rights there.*"[649]

476. In addition to the lack of rights of these children in China, they are also vulnerable to being separated from their mothers, who are susceptible to being arrested and forcibly repatriated. As those who fled the DPRK are aware of the harsh treatment they will face if repatriated, they usually have no choice but to leave their children behind if repatriated to save them from ill-treatment or even death.

- Ms Park was faced with such a dilemma. Ms Park also explained how reuniting with the child she left behind was also not easy. In her case, it took several months for her to reunite with her son. She recalls that when she collected him, he looked like a street child. He was thin, dirty and scrounging for food on the ground. Although he had remained with his father and paternal grandparents, she believes her son had been starving as his grandparents rarely fed him.

  Ms Park considered herself to be very fortunate to have been able to reunite with her son, and understands others face great difficulty in reuniting with their children: "*Children born to DPRK mothers do not have ID, so they cannot go to schools. When their mothers are arrested and sent back to the DPRK, they become literally homeless. When mothers go to [the] ROK and try to take their children, some men use the children to blackmail their mothers for money. [They say] 'if you send this much, I will send the child', but they never do. Women can't go there themselves for fear of being arrested and repatriated.*"[650]

- Ms C, who gave testimony before the Commission at the Seoul Public Hearing, gave birth to a child with the Chinese man she was sold to and had to leave behind the child when she was arrested and repatriated. She was separated from the child throughout the time she was detained in the DPRK and served her sentence. She was only reunited with her child after she managed to flee from the DPRK the second time. After several months in China, she decided to make her way to the ROK but had to leave behind her child again as the father did not want to give up custody of the child. Unless she convinces the father to also come to the ROK or give up the child, she is not certain when she would be reunited with her child.[651]

477. In response to the Commission's concern regarding this issue, expressed through the letter dated 16 December 2013, the Permanent Mission of China in Geneva responded that "the Chinese Government has not found cases related to DPRK women and their children in China mentioned by the Commission". The Commission finds that many such cases exist and that they would become apparent by an investigative process on the part of the Chinese officials.

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[648] London Public Hearing, 23 October 2013, session 2 (00:46:43).

[649] London Public Hearing, 23 October 2013, session 2 (00:46:43).

[650] London Public Hearing, 23 October 2013, session 2 (with additional details provided by the witness in a confidential interview).

[651] Seoul Public Hearing, 24 August 2013, morning.

3. Right to return to one's own country and right to family

478. The right to freedom of movement also entails the right to return to one's own country. According to the Human Rights Committee, the scope of "one's own country" as provided in article 12(4) of the ICCPR is broader than the concept of one's country of nationality. The scope encompasses, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. There are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable and hence not arbitrary.[652]

479. Hundreds of thousands of persons born in the territory that is today the DPRK but living in the ROK have never been granted an opportunity to revisit their homes in the DPRK. According to the 1955 Population and Housing Census conducted by the ROK Central Statistical Office, 735,501 persons among the total population had come from the North (before and during the Korean War). Those in the ROK who claimed to have been born in the North numbered 403,000 in 1995, 355,000 in 2000 and 161,605 in 2005. KINU noted that many of them died of old age particularly after 2000.[653] The same fate has been experienced by those who came from the South to the North before or during the Korean War. At the end of 2013, the Unified Information Center for Separated Families (established and operated jointly by the ROK Ministry of Unification, the Korean Red Cross, and the Committee of Five North Korean Provinces) had on its register of "separated families" 129,264 persons (71,480 alive, 57,784 deceased).

480. The Commission finds that, in violation of the right to family protected by article 23 of the ICCPR, entire families separated between the North and the South have had no opportunity to see each other, exchange letters or speak over the telephone for more than six decades.

481. Negotiations on brief temporary reunions of the separated families commenced in 1971 between the Red Cross of both the DPRK and the ROK. Since then the ROK has placed great importance upon advancing these talks, without this desire being reciprocated by the DPRK. The first official family reunions took place in 1985, whereby 50 people from each side crossed the border for visits with relatives.[654] Talks thereafter stalled until the momentous 2000 summit between Kim Dae-jung and Kim Jong-il. From 2000 to 2010, there were 18 family reunion meetings involving 4,321 families.[655] The reunion programme was then suspended with the worsening of inter-Korean relations resulting from the shelling of the ROK's Yeonpyong Island by the DPRK in November 2010.[656]

482. In August 2013, it was announced that the programme would be revived following weeks of apparently improved relations between the DPRK and the ROK with the newly installed ROK President Park Geun-hye. The reunions were set for 25-30 September, immediately after the Korean Thanksgiving Day (*Chusok*), for 100 people from each side to meet at the Mount Kumgang resort in the DPRK.[657] Just days before the reunions were set to take place however, Pyongyang issued a statement announcing the indefinite

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[652] CCPR/C/21/Rev.1/Add.9, paras. 20-21.

[653] KINU, *White Paper on Human Rights in North Korea* (2013), p. 509.

[654] "Korea family reunion lottery", *BBC News*, 5 July 2000. Available from http://news.bbc.co.uk/2/hi/asia-pacific/820667.stm.

[655] KINU, *White Paper on Human Rights in North Korea* (2013), p. 513.

[656] "N Korea postpones family reunions over South's 'hostility'", *BBC News*, 21 September 2013. Available from http://www.bbc.co.uk/news/world-asia-24184696.

[657] The Mount Kumgang resort is one of the two main joint ROK-DPRK projects which had also stalled following the shooting of an ROK tourist by a DPRK soldier in 2008. The ROK had proposed for talks to be held on 25 September regarding the reopening of the resort.

postponement of the reunions, putting the blame on Seoul.[658] Following the 2014 New Year's address by Kim Jong-un urging for Seoul and Pyongyang to create a favourable climate towards improved relations, President Park responded by proposing, among other actions, to resume the separated families reunion programme.[659]

483. Such family reunions have always been emotionally charged events. Even with the suspension of the programme, the Red Cross continues to receive applications. As of December 2013, 71,480 people are on the waiting list for an opportunity to meet their separated loved ones. Out of this number, only 100 would be selected at a time via a lottery to have the chance to meet briefly (in some cases only via video) under the glaring media spotlight, accompanied always by minders, never to meet again afterwards. With 79 per cent of those registered with the Unified Information Center for Separated Families at the end of 2012 aged 70 and above, each passing year that the reunion programme is suspended means fewer and fewer family members are able to be temporarily reunited, if ever.

484. Even leaving aside clear-cut obligations under international law, the Commission concludes that basic principles of human decency and respect towards the wishes and needs of an elderly generation require that such family reunions not be delayed on unrelated political grounds.

4. Principal findings of the commission

485. The systems of indoctrination and discrimination on the basis of state-assigned social class are reinforced and safeguarded by a policy of isolating citizens from contact with each other and with the outside world, violating all aspects of the right to freedom of movement.

486. In the Democratic People's Republic of Korea, the state imposes on its citizens requirements as to where they must reside and work, in violation of the freedom of choice. Violations are subject to criminal punishment. Moreover, the forced assignment to a state-designated place of residence and work is heavily driven by discrimination based on *songbun*. This has created a socio-economically and physically segregated society, where people considered politically loyal to the leadership can live and work in favourable locations, whereas families of persons who are considered politically suspect are relegated to marginalized areas. The special status of Pyongyang, reserved only for those most loyal to the state, exemplifies this system of segregation.

487. Citizens are not even allowed to leave their province temporarily or to travel within the country without official authorization. This policy is driven by the desire to maintain disparate living conditions, to limit information flows and to maximize state control, at the expense of social and familial ties. This regime of control had a particularly calamitous effect on access to food, livelihood and basic services during the height of the food crisis in the 1990s.

488. In an attempt to keep Pyongyang's "pure" and untainted image, the state systematically banishes entire families from the capital city if one family member commits what is deemed a serious crime or political wrong. For the same reason, the large number of street children who had been migrating clandestinely to Pyongyang and other cities – principally in search of food – have been subject to arrest and forcible transfer back to their home provinces, experiencing neglect and forced institutionalization upon return.

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[658] "N Korea postpones family reunions over South's 'hostility'", *BBC News*.

[659] "South Korea Proposes Resuming Reunions of War-Divided Families", *New York Times*, 6 January 2014. Available from http://www.nytimes.com/2014/01/07/world/asia/south-korea-proposes-resuming-reunions-of-war-divided-families.html?ref=world&_r=0.

489. The state imposes a virtually absolute ban on ordinary citizens travelling abroad, thereby violating their human right to leave the country. Despite the enforcement of this ban through strict border controls, nationals still take the risk of fleeing, mainly to China. When they are apprehended or forcibly repatriated, DPRK officials systematically subject them to persecution, torture, prolonged arbitrary detention and in some cases sexual violence, including during invasive body searches. Repatriated women who are pregnant are regularly forced to undergo an abortion, a practice that is driven by racist attitudes towards persons from China, and to inflict punishment on women who have committed a serious offence by leaving the country. Where a baby is born, it is then killed by the authorities. Persons found to have been in contact with officials or nationals from the Republic of Korea or with Christian churches may be forcibly "disappeared" into political prison camps, imprisoned in ordinary prisons or even summarily executed.

490. Despite the gross human rights violations awaiting repatriated persons, China pursues a rigorous policy of forcibly repatriating DPRK citizens who cross the border illegally. China does so in pursuance of its view that these persons are economic (and illegal) migrants. However, many such DPRK nationals should be recognized as refugees fleeing persecution or refugees *sur place*. They are thereby entitled to international protection. The Commission is of the view that in forcibly returning DPRK nationals, China has violated its obligation to respect the principle of *non-refoulement* under international refugee and human rights law. In some cases, Chinese officials also appear to provide information on those apprehended to their DPRK counterparts to the known danger of those affected.

491. Discrimination against women and their vulnerable status in the Democratic People's Republic of Korea, as well as the prospect of *refoulement,* makes women extremely vulnerable to trafficking in persons. A large number of women are trafficked by force or deception from the Democratic People's Republic of Korea into China or within China for purposes of exploitation in forced marriage or concubinage, or prostitution under coercive circumstances. An estimated 20,000 children born to Democratic People's Republic of Korea women are currently in China effectively deprived of their rights to birth registration, nationality, education and healthcare because their birth cannot be registered without exposing the mother to the risk of *refoulement* to the DPRK under the present Chinese policy.

492. The Commission further finds that the DPRK has repeatedly breached its obligations to respect the rights of its nationals who have special ties to or claims in relation to another country, in this case the Republic of Korea, to return there or otherwise enjoy a facility to meet long separated families. In an age where people everywhere take for granted the opportunity to travel and to converse using modern technology, the severe impediments that the DPRK unreasonably places on its people to prevent contact and communication with each other is not only a breach of DPRK's obligations under international human rights law. It is arbitrary, cruel and inhuman and, particularly, in the circumstances of the cancellation of arrangements previously agreed in relation to reunions of separated families for wholly unpersuasive reason, especially given the advanced ages of the persons concerned.

D. Violations of the right to food and related aspects of the right to life

493. The human right to adequate food is enshrined in article 25 of the Universal Declaration of Human Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and articles 24 and 26 of the Convention on the Rights of the Child (CRC), amongst other international human rights treaties.

494. The Committee on Economic, Social and Cultural Rights (CESCR) describes the right to food "realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement."[660] The Special Rapporteur on the right to food described this right as:

> The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.[661]

495. The right to food has been defined by the ICESCR through the elements of 1) availability, 2) economic accessibility, 3) physical accessibility and 4) adequacy. Availability of the right to adequate food refers to "the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand."[662] Accessibility requires economic and physical access to food to be guaranteed. Economic accessibility (affordability) implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to obtain food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners. Adequacy means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc. For example, if children's food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food should be safe for human consumption and free from adverse substances. Adequate food should also be culturally acceptable.

496. The "fundamental right of everyone to be free from hunger" is enshrined in article 11 (2) of the ICESCR. Article 6 of the ICCPR recognizes every human beings inherent right to life, which also requires the state to increase life expectancy, especially in adopting measures to eliminate malnutrition.[663] These two rights are closely linked including in the context of children's rights.

497. The right to food is an inclusive right. This right cannot be limited to a discussion of the minimum calories, proteins and other specific nutrients required. Equally, the right to food is not solely about access to a given commodity. For these reasons, discussions about "famines" also cannot be limited to consideration of the shortage of food and technical ways through which it can be remedied.[664]

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[660] CESCR, General Comment No. 12, E/C.12/1999/5, para. 6.

[661] E/CN.4/2001/53, para. 14.

[662] CESCR, General Comment No. 12, E/C.12/1999/5, para. 12.

[663] Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.1, para. 5.

[664] The United Nations declares a famine only when the following measures of mortality, malnutrition and hunger are met: 1) at least 20 per cent of households in an area face extreme food shortages with a limited ability to cope; 2) acute malnutrition rates exceed 30 per cent; and 3) the death rate exceeds two persons per day per 10,000 persons. See FAO, "The Integrated Food Security Phase Classification, technical manual V.2", 2012. Available from http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC-Manual-2-Interactive.pdf.)

498. The information received by the Commission points to the fact that starvation in the DPRK started at the end of the 1980s, peaked during the 1990s and continued after the 1990s. In line with its mandate, the Commission has focussed its attention on the human rights issues associated with the right to food, namely why people are suffering and dying of hunger, and whether someone is responsible for this situation. For the present report, the Commission uses the terms "famine", "hunger" and "starvation" synonymously, defining them as the lack of access to adequate food,[665] which can lead to physical harm and death. The use of this terminology permits the examination of a range of international obligations related to the rights to life, to adequate food and to the highest attainable standards of health.

499. The Commission is mindful of concerns relating to the reliability of the data and statistics produced in and about the DPRK, as discussed below.[666] The Commission has referred to such data and statistics produced where it found an adequate level of corroboration on the basis of testimonies, expert opinions and cross-referencing.

1. Availability, adequacy and affordability of food in the Democratic People's Republic of Korea

(a) Situation up until the early 1990s

500. The DPRK economy has been built on the principle of the state's ownership of the means of production,[667] central planning[668] and the *Juche* idea of economic self-sufficiency.[669] Article 25 (3) of the DPRK Constitution declares, "The state provides all the working people with every condition for obtaining food, clothing and housing."

501. For geographical and historical reasons, agriculture tended to be concentrated in the south of the Korean Peninsula, where the climate is more favourable and the majority of arable land is located. The northern part of the Peninsula, which is colder, less fertile, and

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[665] Food that is quantitatively and qualitatively sufficient to meet physiological caloric needs and containing the nutrients necessary for physical and mental development.

[666] See section IV.D.4.

[667] Article 20 of the DPRK Constitution stipulates that "the means of production are owned solely by the state and cooperative organizations". The collectives were converted into state farms where workers-farmers receive state wages rather than a portion of fruits of their collective labour. This conversion is provided for by article 23 of the Constitution: "The state shall consolidate and develop the socialist cooperative economic system by improving the guidance and management of the cooperative economy and gradually transform the property of cooperative organizations into the property of the people as a whole based on the voluntary will of all their members."

[668] Article 34 of the DPRK Constitution states that, "The state shall formulate unified and detailed plans and guarantee a high rate of production growth and a balanced development of the national economy."

[669] See section III.D. Beginning with the 1992 revision of the Constitution, *Juche* received prominence as the first article (article 19) in the Economics chapter: "In the DPRK, socialist production relations are based upon the foundation of an independent national economy." In the early 1970s, the *Juche* idea was announced as the leading guideline of the country: the principle of food self-sufficiency was officially incorporated into *Juche Gyungje*. *Juche Nongbub* ("Juche agriculture") primarily concerns farming techniques. It consists of three parts: *youngnong wonchik* (farming principles), *youngnong bangbub* (farming methods) and *sebu gongjeong* (detailed production processes). In the first place, its farming principles provide four basic rules for agricultural administrators and producers to follow in order to increase agricultural production under such unfavourable natural conditions as small land and cold weather. Lee Suk, "Food shortages and economic institutions in the Democratic People's Republic of Korea", PhD dissertation, University of Warwick, 2003, p. 128.

more mountainous, was originally the site of most of the industrial activity.[670] After the Korean War, the DPRK pursued a strategy of ensuring food security through self-sufficiency. To attain self-sufficiency, the government adopted three core strategies: 1) expanding cropland; 2) shifting output from traditional food crops such as tubers, millet, and potatoes to higher-yield grains, namely, rice and corn; and, most importantly, 3) adopting an industrial approach to agricultural production.[671] During the 1960s, Kim Il-sung announced a framework for the agricultural development of the country based on four principles: mechanization, chemicalization, irrigation and electrification. The agricultural conditions of the DPRK are not favourable for food self-sufficiency. Only 14 per cent of the 12 million hectares of land is arable and 80 per cent of the country is mountainous. Moreover, the DPRK lacks the industrial components necessary for the type of agriculture it opted for, such as tools and fuel and had to import them from abroad. Therefore, from the outset, and despite claiming self-sufficiency, the DPRK adopted a system heavily dependent on external assistance.

502. The vulnerability of the DPRK's economic system was apparent before its collapse in the mid-1990s.[672] The first signs of the food shortage in the DPRK started in the late 1980s. Beginning in 1987, with its own economy in disarray, the Soviet Union began to cut all forms of aid, trade, and investment in the DPRK, causing a shift in the DPRK's economic situation.[673] The trade with the Soviet Union had not only accounted for three-fifths of the DPRK's total trade in 1988, it was also based on concessionary terms. Soviet coal and oil exports to the DPRK, for instance, were provided at substantially less than the global market price.[674]

503. After the collapse of the Soviet Union, the DPRK had to pay standard international prices for oil and coal, in hard currency. Having defaulted on its international loans,[675] the DPRK found itself with limited access to foreign currency. Therefore, it could not buy the fuel, fertilizers, chemicals and spare parts needed for implementing its agricultural plan and maintaining sufficient levels of food production.

504. In the absence of Soviet aid, the flow of inputs needed for the DPRK's agriculture diminished, and the DPRK's food production decreased. For a time, China filled the gap left by the Soviet Union's collapse and provided the DPRK with significant aid.[676] By 1993, China was supplying the DPRK with 77 per cent of its fuel imports and 68 per cent of its food imports.[677] Dependence on China had effectively replaced dependence on the Soviet Union. However, in 1993, China faced its own grain shortfalls and need for hard currency. It sharply cut aid to the DPRK.[678] In 1992 and 1993, Chinese grain shipments to the DPRK

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[670] Lee Suk, "Food shortages and economic institutions in the Democratic People's Republic of Korea", p. 128.

[671] Stephen Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform*, p. 26.

[672] Stephen Haggard and Marcus Noland, *Famine in North Korea*; Hazel Smith, *Hungry for Peace: International Security, Humanitarian Assistance, and Social Change in North Korea* (United States Institute of Peace Press, 2005), p. 66.

[673] Victor Cha, *The Impossible State: North Korea, Past and Future* (Ecco, 2012), p. 186.

[674] Meredith Woo-Cumings, "The Political Ecology of famine: The North Korean Catastrophe and Its lessons", Research Paper Series, No. 31 (Tokyo, Asian Development Bank Research Institute, 2002), p. 26.

[675] See for instance: "North Korea Is Told of Loan Default", *New York Times*, 23 August 1987.

[676] Submission to the Commission: Stephan Haggard and Marcus Noland, *Hunger and Human Rights: The Politics of Famine in North Korea* (U.S. Committee for Human Rights in North Korea, 2005), p. 14.

[677] Haggard and Noland, *Hunger and Human Rights*, p. 4.

[678] Submission to the Commission: U.S. Committee for Human Rights in North Korea, "Failure to Protect, A Call for the UN Security Council to Act in North Korea", 2006, p. 18.

reportedly averaged nearly 800,000 tons. In 1994, they fell to under 280,000 tons as a result of China's reluctance to continue financing major grain shipments to the DPRK on "friendship terms".[679]

(b) State food distribution system

505. Article 25 (3) of the DPRK Constitution declares: "The state provides all the working people with every condition for obtaining food, clothing and housing." Since the entire economy is state-owned, this implies that the state has an obligation to provide each and every citizen in the DPRK with enough adequate food.

506. The DPRK food rationing system consists of two sub-institutions: the Public Distribution System (PDS), and the food rationing mechanism in cooperative farms. In theory, all non-farm households are entitled to state food rations provided by the PDS. The Administration and Economy Committee in each province is responsible for providing food for the population and organizes the rationing procedures independently. However, the central government sets up national rationing norms and arranges provincial food trade in order to enforce the norms in all provinces.[680]

507. People working in cooperative farms do not have access to the PDS. Cooperative farms were established to incorporate all farm households, land and other agricultural and social properties in a village. Member households are the formal owners of the cooperative farms. Member households do not receive a salary from the government. Instead, they should receive food rations that are taken from the farm's outputs. The state agricultural agency at county level, the County Management Commission, makes all decisions relating to a cooperative farm, including crop selection, output distribution and farm marketing. Like the PDS, cooperative farms define a standard ration for each farm household: the ration for an adult farm labourer usually corresponds to the PDS ration for a heavy industrial worker. The rationing mechanism in cooperative farms supplied farm households with annual rations in one single distribution, carried out shortly after the autumn harvest was completed, whereas the rest of the population was supposed to receive rations twice a month from the PDS. The system was designed so that if a farm household was given more grain than the standard ration, the cooperative farm can sell the difference to state procurement agencies, and when grain distribution is lower than the standard ration, the farm provides the difference in the form of either grain loans or aid from communal funds.[681]

508. The theoretical calculation of rations under the PDS depended on work and other factors. For instance, an average working adult received a grain ration of 700 grams a day, a housewife was given merely 300 grams, and a person doing heavy physical work (for example a miner) was eligible for the highest daily ration of 900 grams.[682] The ratio of rice to other (less nutritious) grains in a ration depended largely on one's place of residence.

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[679] Nicholas Eberstadt, "The North Korean economy. Between Crisis & Catastrophe", p. 110. For more details on the change of China's policy towards the DPRK see also Liu Ming, "Changes and Continuities in Pyongyang's China Policy", in *North Korea in Transition. Politics, Economy, and Society*, Park Kyung-ae and Scott Snyder, eds. (Rowman &Littlefield Publishers, 2013), pp. 219 ff.

[680] Lee Suk, "Food shortages and economic institutions in the Democratic People's Republic of Korea".

[681] Ibid., pp 21-22.

[682] ROK Ministry of Unification, "Food rations by class: Understanding North Korea 2005", Education Centre for Unification, March 2006, pp. 245-247.

The more important the work was for the state, the higher the ratio of grain that the worker received.[683]

509. The public distribution system progressively failed to meet its ration targets even before its collapse in the mid-1990s. The chart below summarizes the decreases in the food ration amount since 1955. While in the 1970s, the rations may have been enough to feed a normal adult, the rations steadily decreased from 1987.

	Norm	*Ration for Official Worker*
1955	Basic Formula: from 900 grams of daily rations for heavy industrial workers to 300 grams for children	700 grams per day 256 kilograms per year
1973	Deduction of four days rations from monthly rations for so-called "war-time grain reserves" (average 13 per cent deduction)	608 grams per day 222 kilograms per year
1987	10 per cent deduction for so-called "patriotic grain"	547 grams per day 200 kilograms per year
1992	10 per cent deduction from adult rations	492 grams per day 179 kilograms per year

Figure 1. Changes in food rations in the Democratic People's Republic of Korea before 1994[684]

510. The end of the 1980s can be considered as the beginning of the period of starvation in the DPRK. In 1987, the PDS rations, stable since 1973, were reduced by 10 per cent.[685] The distribution became increasingly unreliable in the 1990s.

- One witness stated that he first saw starvation in 1987 in Rason. "A woman died from starvation. The Party said that she died from a heart attack."[686]
- Another witness stated that until the beginning of the 1990s, people received a steady ration, which was distributed every 15 days. One ration consisted of brown flour, corn and potato. The amount varied depending on the status of the recipient – for example, a working man got 700 grams, a student 500 grams, and dependents 300 grams.[687]
- Another witness testified that he first started experiencing food scarcity in 1991-1992.[688]

511. In 1991, the DPRK authorities launched a "Let's eat two meals a day" campaign in an attempt to get the population to accept further ration cuts.[689] Except for the army and heavy industrial workers, a further 10 per cent was cut from the PDS rations for the population in 1992.[690]

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[683] Submission to the Commission: Andrew Natsios, *The Great North Korean Famine* (Washington, D.C., United States Institute of Peace Press, 2002).

[684] Lee Suk, "The DPRK famine of 1994-2000: Existence and Impact", KINU, 2005.

[685] Oh Gyung-chan cited in Lee Suk, "The DPRK famine of 1994-2000: Existence and Impact", KINU, 2005, p. 6.

[686] TLC033.

[687] TAP001.

[688] TAP011.

[689] Lee Suk, "The DPRK famine of 1994-2000: Existence and Impact", KINU, 2005, p. 6.

[690] Ibid.

- A former military officer stated that food for the military became scarce in the early 1990s. In 1991, a patriotic rice donation campaign was launched, asking every household to save 10 kilograms of rice and donate it back to the government to feed the military.[691]

(c) Hunger and mass starvation in the 1990s

512. The food situation continued to deteriorate. Reportedly, food riots took place in 1993.[692] Diplomatic negotiations were opened by the DPRK with countries in Asia to obtain emergency food shipments.[693] From 1994, state actions became increasingly harsh towards specific parts of the population. The PDS was suspended in four northern provinces, North and South Hamgyong, Ryanggang and Kangwon.[694] In addition, a campaign was launched to re-collect 5 kilograms of grain that had already been handed out to farmers as part of their annual ration.[695] As a result, an increasing number of DPRK citizens went to China and Russia in search of food.[696]

513. The DPRK authorities initially denied the existence of a problem that it could not resolve without international aid. Faced with the undeniable reality of mass starvation, this attitude slowly changed.[697] In February 1995, the DPRK authorities announced the receipt of food aid from an international NGO. In May 1995, the President of the ROK, Kim Young-sam, made a public offer of unconditional food assistance to the DPRK. Later that month the government of the DPRK admitted that the country was experiencing a food shortage. It asked the ROK and Japan for food assistance. An appeal for aid was also made to the United States of America.

514. Natural disasters exacerbated the availability of food. Between 30 July and 18 August 1995, torrential rains caused devastating floods in the DPRK.[698] On 31 August 1995, the United Nations Department of Humanitarian Affairs stated that, for the first time, the DPRK sought their assistance.[699] There were more floods in 1996, followed by "the longest spring drought in recorded history".[700] As a result of the natural disasters, the United Nations reported "major devastation for the agricultural sector" and a total of 1.5 million tons of grain lost.[701] Additionally, the transportation system was critically affected, hindering the distribution of food to a large part of the population.

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[691] TJH027.

[692] "North Korean defector tells of food riots", *The Guardian*, 23 August 1993. Available from http://www.theguardian.com/world/1993/aug/23/northkorea.

[693] Lee Suk, "The DPRK famine of 1994-2000", p. 7.

[694] Lee Suk, "The DPRK famine of 1994-2000", p. 8. See also Mr Natsios' testimony, Washington Public Hearing, 31 October 2013, morning.

[695] Ahn Jong-Chui cited in Lee Suk, "The DPRK famine of 1994-2000", p. 8.

[696] Lee Suk, "The DPRK famine of 1994-2000", p. 8.

[697] Reportedly, economic problems were admitted on some occasions. See "North Korea: It's bad-Official", *The Economist*, 18 December 1993 and "North Korea: A dangerous game", 28 May 1994.

[698] United Nations Department of Humanitarian Affairs, "United Nations Consolidated UN Inter-Agency Appeal for Flood-Related Emergency Humanitarian Assistance to the Democratic People's Republic of Korea (DPRK) 1 July 1996-31 March 1997", April 1996.

[699] "Floods Strike 5 Million, North Korea Reports", *New York Times*, 31 August 1995. Available from http://www.nytimes.com/1995/08/31/world/world-news-briefs-floods-strike-5-million-north-korea-reports.html.

[700] FAO/WFP, "Crop and Food Supply Assessment Mission to the Democratic People's Republic of Korea", 27 July 2001.

[701] Ibid.

515. However, the foregoing chronology of events contradicts the DPRK's often reiterated argument that the floods were the main cause of the food crisis. Starvation was already a problem before the 1995 floods. Japan's Acting Foreign Ministry Spokesman Mr Shimanouchi Ken underlined in September 1995: "Before the flooding, on 30 June 1995, the Japanese Government decided to supply a total of 300,000 tons of rice to [the DPRK] from a humanitarian point of view, in response to a request from [the DPRK], which was suffering from a serious food shortage."[702]

516. The Commission received a large number of testimonies from people who suffered starvation and witnessed the death of their relatives and children during this period. People undertook desperate acts to survive. Some made porridge out of the roots of grass or cooked the inner bark of young pine branches. When the harvest was over, some picked the roots of rice plants, mixed and ground them with corn to make noodles out of them. People eating such rough food substitutes, suffered from constant indigestion and diarrhoea, and in the most severe cases, death.

- At the Seoul Public Hearing, Mrs C testified: "*My father, because of malnourishment, passed away early in the morning of the 16th of February 1996… In April 1997 my older sister and my younger sister died of starvation. And, in 1998, my younger brother also died.*"[703]
- At the Washington Public Hearing, Ms Jo Jin-hye described the malnutrition experienced by her and her family during the famine in the 1990s. Her two brothers and her grandmother died of starvation:

  "*When my younger brother was born… my grandmother actually wanted to kill [him] because my mom was very undernourished and she was not able to lactate. [My mother] begged my grandmother saying, 'Please do not kill the baby.' … I had to take care of this baby brother. So I was piggybacking him around the town and sometimes my grandmother had to carry him around to make him stop crying. But as I mentioned, because there was no food, he was not able to stop crying. … [My] baby brother died in my arms because he was not able to eat. And because I was holding him so much, he thought I was his mom. So when I was feeding him water, he was sometimes looking at me smiling at me.*"[704]
- At the London Public Hearing, Mr Choi Joong-hwa stated: "*Within five months from when I came back from the army in the 1990s my older brother died and, the next year, my younger brother died. My third brother died of malnutrition … later on.*"[705] When he had to bury three of his brothers who died from starvation he thought that there was something wrong in the DPRK: "*My brother survived the war in the fifties and why he had to die [in the 1990s]? Why did my brothers have to die in peacetime?*"[706]
- A woman described the food situation in South Hamgyong Province after 1995. Her father died in February 1995. Her two sisters suffered from malnutrition. The witness stated: "*My [older] sister's dying wish was to eat noodles, but there was no money to buy even one bowl of noodles. She died in 1997. My younger sister died*

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[702] "Press Conference by the Press Secretary 19 September 1995", Ministry of Foreign Affairs, Japan. Available from http://www.mofa.go.jp/announce/press/1995/9/919.html#2. See also http://www.mofa.go.jp/policy/other/bluebook/1996/I-c.html.

[703] Seoul Public Hearing, 24 August 2013, morning (03:20:45).

[704] Washington Public Hearing, 30 October 2013 (00:45:19).

[705] London Public Hearing, 23 October 2013, session 3 (00:52:32).

[706] London Public Hearing, 23 October 2013, session 3 (01:08:02).

just one month later. Her dying wish was to eat a slice of bread. My younger brother had been working at the Koowon coal mine from 1995, but he was so weak he was fired. He died of malnutrition on the train on the way back home. I found his body."[707]

- At the Seoul Public Hearing, Ms P said that five sons of her neighbour died of starvation and that some people looking for food in the mountains died because they ate toxic mushrooms.[708]

- Mr Kim Gwang-il described the "great famine" at the Seoul Public Hearing:

  "It's as vivid as if it happened yesterday. In the 1990s, especially in Hamgyong region, the famine began in 1994. ... in one day, 80 people from [my neighbourhood] died. So many people died that we didn't have enough coffins so we borrowed [traditional burial boards] to give them burials. We didn't have any wood to even give tombstones. That's how many people died."[709]

- At the Seoul Public Hearing, Mr A described the period between 1997 and 1999 as the "great famine", the most difficult time. He said that the distribution of rations stopped during those years.[710]

- Mr Ji Seong-ho described how he lost his left hand and part of his left leg in March 1996. He had been starving and was looking for food or money to buy food. He had got on a moving train to collect coal to sell, but as he had not eaten for many days, he fell off the train and the train ran over him, cutting off his left arm and leg. Mr Ji said that in the winter of 1990 there was nothing for him and his family to eat: "*We would eat tree bark, and we would get the roots of the cabbage under the ground, but that was just not enough. As time passed, our grandmother and other weak people were just not able to move at all.*"[711]

517. At the beginning of 1996, the DPRK authorities made an official announcement that the PDS would stop providing food rations until May of that year. Reportedly, by 1996, wild food accounted for some 30 per cent of the population's diet.[712] By 1997, the PDS was estimated to be supplying just 6 per cent of the population. In 1998, the state was not supplying anyone for large parts of that year.[713] In January 1998, there was an official announcement that individual families were henceforth obligated to assume responsibility for feeding themselves rather than relying on the PDS.[714] The country's rapidly deteriorating food situation was reflected in a nutritional survey conducted by the United Nations, which was released in December 1998 and showed that 16 per cent of children were acutely malnourished and 62 per cent were suffering chronic malnutrition.[715]

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[707] TSH016.

[708] Seoul Public Hearing, 21 August 2013, afternoon.

[709] Seoul Public Hearing, 24 August 2013, morning (00:10:58).

[710] Seoul Public Hearing, 22 August 2013, afternoon.

[711] Seoul Public Hearing, 22 August 2013, morning (01:42:55).

[712] FAO/WFP, "Crop and Food Supply Assessment Mission to the Democratic People's Republic of Korea: Special Report", December 1996. Recourse to wild food (wild fruits, plants, grass, etc.) is generally considered as an extreme coping mechanism because it can be associated with diarrhoea and other diseases and a leading cause for malnutrition of children under 5.

[713] Andrew Natsios, "The Politics of Famine in North Korea", Special Report 51, United States Institute of Peace, August 1999, pp. 5-11.

[714] Amnesty International, "Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)", January 2004, pp. 9-10.

[715] WFP, "Nutrition Survey of the Democratic People's Republic of Korea", November 1998.

518. Many interviews described how people were not receiving food, leaving them with no choice but to try to obtain it from other means, including begging or engaging in activities deemed illegal by the authorities.[716]

- At the Seoul Public Hearing, Mrs C said that in South Hamgyong Province the provision of rations through the PDS stopped in 1994.[717]
- At the Seoul Public Hearing, Mr Kim Kwang-il described the food distribution in South Hamgyong Province: *"I realized the need for freedom in 1996....All I had to do was work because the government was giving me the rice and food. And that's what I did up until 1996 but the rations stopped in 1996. And people started doing business, committing crimes, people started stealing."*[718]
- When the PDS stopped in 1995, one witness started trading by selling items on markets. She also sometimes went to the parents of her husband's students' to ask for food.[719]
- Another witness testified that people in the DPRK were selling all sorts of things to survive, including drugs and copper stolen from state businesses. The witness described the predicament the population found itself in as follows: *"Obeying the rules in the DPRK, you will not be able to survive. However, if you are caught breaking the rules, you can get arrested and have your life taken away."*[720]
- At the Tokyo Public Hearing, Ms Saito described selling wire around the country to survive. The illegal business required inconspicuously transporting the wire on trains. Ms Saito sewd the wire into her clothes, making them heavy and difficult to wear, but usually preventing detection by train guards. She told the Commission of the desperate measures she saw one young woman take:

  > *"[I]n front of me, a lady who was around her 20s was there standing with her baby on her back. I think she was also there for some kind of transaction and she was on her way back. In that sense, a lot of people in North Korea really suffered from food shortages, but then North Koreans were really kind, they have kindness in their heart. This lady with the baby on her back; she was standing in front of me, and she was trying to make sure that her baby is not crushed. People would be helping her out saying that 'Make sure the baby is not crushed'."*

  Ms Saito and the young woman with the baby were taken off the train by police. Ms Saito knowing she was carrying wire understood why she was asked to follow the police, however she could not understand why the young woman was also asked.

  > *"She only had a baby on her back and she had a very small bag in her hand, and I was wondering why she was caught. But I was waiting and the police came back – this time, he was with nobody. It was just me and the woman. I asked her, 'Don't you want to feed your child; it's been a long time.' She said, 'It will be okay.' I was really wondering why the baby was so quiet even after 6 hours or 7 hours ride on the train....*
  >
  > *After my interrogation was over, the police told the woman to put the baby on the desk, and suddenly the woman started to cry and I was wondering why. The woman did not put the baby down, she just kept crying and the police also was wondering why. The woman was using a cloth, a wide band to tie the baby on her back, and she*

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[716] TBG028, TSH018, TSH016.

[717] Seoul Public Hearing, 24 August 2013, morning.

[718] Seoul Public Hearing, 24 August 2013, morning (01:52:06).

[719] TBG032.

[720] TAP001.

> *took the baby off and laid it on the table, but then I suddenly realized that the baby was probably 18 months old or less than 2 years old; it was a boy. I saw red blood around the stomach, and the police asked what this was all about. The woman was simply crying and the police suddenly ripped the baby's torso apart and about 2 kilograms of copper wire was found inside the baby's stomach. This just told me that this is how far you have to go in order to keep living here in North Korea."*[721]

(d) Seeking alternatives to State distribution

519. The failure of the PDS forced people to find their own coping mechanisms to avoid starvation. The informal markets were spontaneously established by the population, without this being a state policy choice. The *jangmadang* (market place) started as "farmer's markets", where people sold agricultural produce they had grown in small gardens and other plots of land around their houses. Collective farms also set aside a portion of the rice they produced in order to exchange it for agricultural supplies they needed for the following season, because they knew the state would fail to provide such supplies to the farms. They sold or exchanged this stored rice in the newly emerging markets. The rudimentary *jangmadang* economy, which developed naturally with no laws or regulations, was at first an illegal, or black market. However, by the late 1990s it had reached all parts of the DPRK. In 2008, it was estimated that informal economic activities accounted for 78 per cent of the total income of DPRK households.[722]

520. Testimonies received by the Commission confirm that people engaged in market activities, by selling videos, cigarettes and other items, to earn money to buy food and complement whatever insufficient rations they still received through the PDS.

- One witness said that in the 1990s the food rations were halved. Therefore, his family had to supplement the ration through the market and trading with China.[723]
- Another witness also underscored that food became scarce in the 1990s. Food smuggling and black markets for rice emerged as a consequence. Before the food became scarce, there were no proper market places. When Kim Il-sung died, even the distribution of food rations stopped totally and market places became the only places to obtain food. [724]
- From 1992, one witness, then a teenager of 14 years, engaged in business by selling videos on the black market. Because he engaged in this business, he was often arrested.[725]
- Another witness claimed that the food situation was good until 1995. In 1996, his family started selling belongings from their house. After all their belongings ran out, the witness tried to sell cigarettes and vegetables in the market.[726]
- One witness described the development of the "*Talligi* economy" in the 1990s. He explained that "*Talligi*", which literally means "running" in Korean, refers to the work of procuring goods in a small city and transporting them to the countryside to

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[721] Tokyo Public Hearing, 30 August 2013, morning (01:12:00).

[722] Kim Byung-yeon and Song Dong-ho, "The Participation of North Korean Households in the Informal Economy : Size, Determinants, and Effect", *Seoul Journal of Economics*, vol. 21 (2008), p. 373.

[723] TAP011.

[724] TAP001.

[725] TSH035.

[726] TSH018.

profit from price differentials. People usually sold products coming from Rajin-Sŏnbong (Rason Special Economic Zone). Most of the goods were made in China.[727]

- A married father with two children said that the food ration was never enough for his family of four. His wife had to conduct illegal activities in order to get more food for the family. She did some farming and sold liquor and beans to make tofu covertly.[728]

521. The development of markets had a profound impact on the economy of the DPRK. Markets became an alternative to the PDS. They also provided opportunities for some groups of the population to increase their revenue, for instance through trade. Various elements determined whether one can benefit from the markets including place of residence; occupation; ability to engage in corrupt practices; and access to foreign currency (through official employment, nonofficial economic activities or remittances from relatives in China, Japan and the ROK).[729] Some officials benefit from the markets, by diverting food to make a profit and/or by obtaining bribes in relation to market activities. Previously marginalized groups have become even more vulnerable in this context.

522. Markets continue to have a big impact on the physical and financial accessibility of food. People without financial resources or the capacity to trade are effectively shut out from the market.

- One witness from Nampo in South Pyongan Province, said that rice was 500-600 won per kilogram in the market and the witness could not afford it.[730]
- Another witness stated that in 2010-2011, no food was distributed. She estimates that 40 per cent of the population could not afford buying any food when she left.[731] The witness emphasized: "*Those who do not have money, will starve*."
- In the Tokyo Public Hearing, Mr Ishimaru Jiro of Rimjin-Gang, a media unit of Asia Press which maintains a network of undercover journalists in the DPRK, noted that the current price of the rice on the market is around 5,000 won per kilogram. Mr Ishimaru highlighted that the average salary of public servants is 2000-3000 won per month. According to him, the problem in the DPRK is access to food. There is a lot of food sold in the market, but people cannot afford it.[732]
- In one confidential interview a woman stated that in 2012, the price of rice soared and most people could no longer afford it. "*The poor and the weak die of hunger*", she added.[733]

(e) Persistence of hunger and starvation after 2000

523. While the number of deaths from starvation seems to have fallen since 2000, reports and studies indicate that large portions of the population are still facing hunger and malnutrition.[734] According to the Food and Agricultural Organization of the United Nations,

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[727] TLC013.

[728] TLC038.

[729] Stephen Haggard and Marcus Noland, *Famine in North Korea*, p. 172.

[730] TSH052.

[731] TBG028.

[732] Tokyo Public Hearing, 29 August 2013, afternoon.

[733] TBG032.

[734] Malnutrition is defined as nutritional disorder in all its forms and includes both undernutrition and overnutrition. It relates to imbalances in energy, and specific macro and micronutrients as well as in dietary patterns. Conventionally, the emphasis has been in relation to inadequacy, but it also applies to both excess and imbalanced intakes. Malnutrition occurs when the intake of essential macro- and micronutrients does not meet or exceeds the metabolic demands for those nutrients. These metabolic

the number of people suffering from malnutrition in the DPRK was 8.4 million in 2000-2002 (representing 36.6 per cent of the population); 8.6 million in 2005-2007 (36 per cent of the population); 9.7 million in 2008-2010 (40.2 per cent) and 7.6 million in 2011-2013 (30.9 per cent).[735] Instances of deaths from starvation continue to be reported.

524. In the winter of 2000 and spring of 2001, the DPRK experienced drought which severely affected wheat, barley and potato crops. The drought also led to an acute loss of soil moisture, the depletion of reservoirs and the crippling of irrigation systems.[736] According to a source from the ROK, 15,000 DPRK soldiers deserted due to food shortages in 2001-2002.[737]

525. In 2002, the DPRK introduced the "7.1 Economic Management Improvement Measures" (7.1 measures). This new policy was introduced to maximize profit in a changing environment, whilst at the same time preserving the socialist ideology. The DPRK pursued the following objectives: 1) to restructure some loans and make official prices correspond to real market prices; 2) to increase managerial discretion afforded to state companies and encourage independent management; 3) to shut down the black market, which had continued to grow; and 4) to shift consumer goods distribution back to the government system. The 7.1 measures envisioned the establishment of "general markets".[738] There were some characteristics that showed a sense of reform, such as a demand for profitability of state businesses, but this did not mean a fundamental reform of the nation's planned economy system. Because the authorities tried to close the black markets while not having sufficient means to rebuild the public rationing system, the measures caused hyper-inflation and ended in failure. In order to handle this situation, the authorities decided to legalize the black market in April 2003.[739] For decades rice had been "sold" in the DPRK within the PDS at a purely token price. After the reforms, the official price increased by a multiple of 550, from 0.08 to 44 won per kilogram, approximating the market price at the time. Accordingly, many DPRK citizens suffered from unintended side effects of the reforms.

526. In 2005, the DPRK signed an agreement to eliminate its nuclear programmes in exchange for aid and security assurances. In the same year, the World Food Programme (WFP) representative reportedly stated: "What the government is able to provide the people

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demands vary with age, gender and other physiological conditions and are also affected by environmental conditions including poor hygiene and sanitation that lead to food as well as waterborne diarrhoea (WHO Global Nutrition Policy Review). When micronutrient malnutrition occurs in persons who are of a normal weight or who are overweight or obese, it is sometimes referred to as hidden hunger. Hidden hunger often has no visible warning signs, leaving sufferers unaware of their dietary deficiency and its potentially adverse impact on their health. Pregnant and lactating women have additional specific needs. The additional food needed during pregnancy and lactation is critical to ensuring adequate nutrient intake sufficient in both quantity and quality for fetal growth and production of breast milk. Maternal undernutrition at this stage can lead to intrauterine growth retardation and low concentrations of certain nutrients in breast milk. FAO, Committee on World Food Security, "Coming to terms with terminology", CFS 2012/39/4. Available from http://www.fao.org/docrep/meeting/026/MD776E.pdf.

[735] FAO, The State of Food Insecurity in the World (2013).

[736] FAO/WFP, "Crop And Food Supply Assessment Mission to the Democratic People's Republic of Korea", 27 July 2001.

[737] "15,000 North Korean soldiers desert amid famine in 2001-2002: report", *Agence France-Presse*, 26 September 2003.

[738] Exhibit T8: Ishimaru Jiro ed., *Rimjin-gang: News From Inside North Korea* (Osaka, Asiapress Publishing, 2010), p. 49

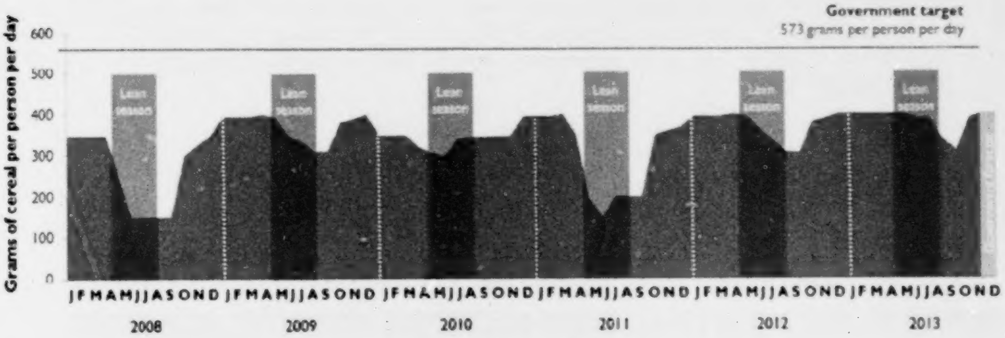
[739] Ibid.

now, these 250 grams a day, is a starvation ration."[740] One witnesss said that her second granddaughter, born in 2005, suffered from the lack of food and developed health issues: "*Even today, although she gets better food, she is not all well.*"[741]

527. In July 2006 and August 2007, new floods hit the DPRK. The United Nations reported that the summer floods decimated domestic food production, placing the vulnerable population at risk of rising malnutrition during the winter months.

528. The worsening humanitarian situation reportedly forced people to take desperate measures. The Korea Institute for National Unification reported: "Though there were testimonies of the sale of human meat during the period of the Arduous March, such testimonies almost disappeared after 2000. However, in 2006 there was a re-emergence in testimonies of cannibalism attributed to the economic breakdown and food shortages."[742]

529. The DPRK continues to operate the PDS and has tried on various occasions to re-launch it while cracking down on the "informal economy".[743] According to the FAO and the WFP, the Government tried to revive the PDS in October 2005. This led to some improvements but before long it reverted back to pre-revival levels.[744] Various factors including low food production, high fuel prices and infrastructure damage caused food distribution to be irregular. Between 2003 and 2007, less than a quarter of PDS households and only two-thirds of farmers received their food rations, and even those who did rarely received their full entitlement. Various attempts by the government to relaunch the PDS failed. Between 2004 and 2008, food rations ranged from 150 grams per person per day to 350 grams. In 2008, rations decreased from 350 grams at the beginning of the year to 250 grams in May. They stood at 150 grams – about one quarter of the minimum nutritional requirement - from June to September, before increasing again to 300 grams in October.[745] As shown in the figure below, the Government target of 573 grams per day has not been attained since 2008.



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[740] "North Korea, Facing Food Shortages, Mobilizes Millions From the Cities to Help Rice Farmers", *New York Times*, 1 June 2005. Available from http://www.nytimes.com/2005/06/01/international/asia/01korea.html?_r=0.

[741] TAP001.

[742] KINU, *White Paper on Human Rights in North Korea* (2012), p. 98. Accounts of execution for the motive of cannibalism and cannibalism in detention were also mentioned by TSH009, TBG011, TLC025.

[743] Andrei Lankov, *The Real North Korea*; WFP, "WFP Emergency Reports", 30 September 2005. See also Human Rights Watch, "A Matter of Survival: The North Korean Government's Control of Food and the Risk of Hunger", 2006.

[744] FAO/WFP, "Special Report: Crop and Food Security Assessment Mission to the Democratic People's Republic of Korea", 8 December 2008.

[745] Ibid., pp. 23-24.

Figure 2. Average monthly PDS rations, 2008-2013 compared to Government target[746]

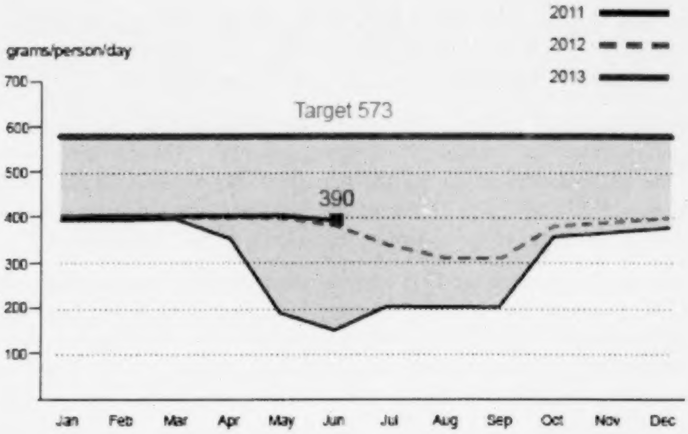

Figure 3. Public Distribution System ration 2011-2013 (grams/person/day)[747]

530. In 2008, the WFP reported that the DPRK was experiencing acute food shortages.[748] The FAO/WFP food and security assessment published during the same year found that compared to the 2003-2005 period, the consumption of wild foods in the DPRK had increased by nearly 20 per cent:

> Diarrhoea caused by increased consumption of wild foods was reported to be one of the leading causes for malnutrition amongst children under 5, particularly in urban areas. Most hospitals and child institutions had limited ability to effectively treat malnutrition due to lack of fortified food for infants.[749]

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[746] FAO/WFP, "Crop and Food Security Assessment Mission to the Democratic People's Republic of Korea", 28 November 2013, p. 30.

[747] United Nations Office for the Coordination of Humanitarian Affairs (OCHA), "DPR Korea 2013: Humanitarian Needs and Priorities", p. 6.

[748] FAO/WFP, "Special Report: Crop and food security assessment mission to the Democratic People's Republic of Korea", 8 December 2008.

[749] FAO/WFP, "Executive Summary: Rapid Food Security Assessment: Democratic People's Republic of Korea", June/July 2008, p. 3.

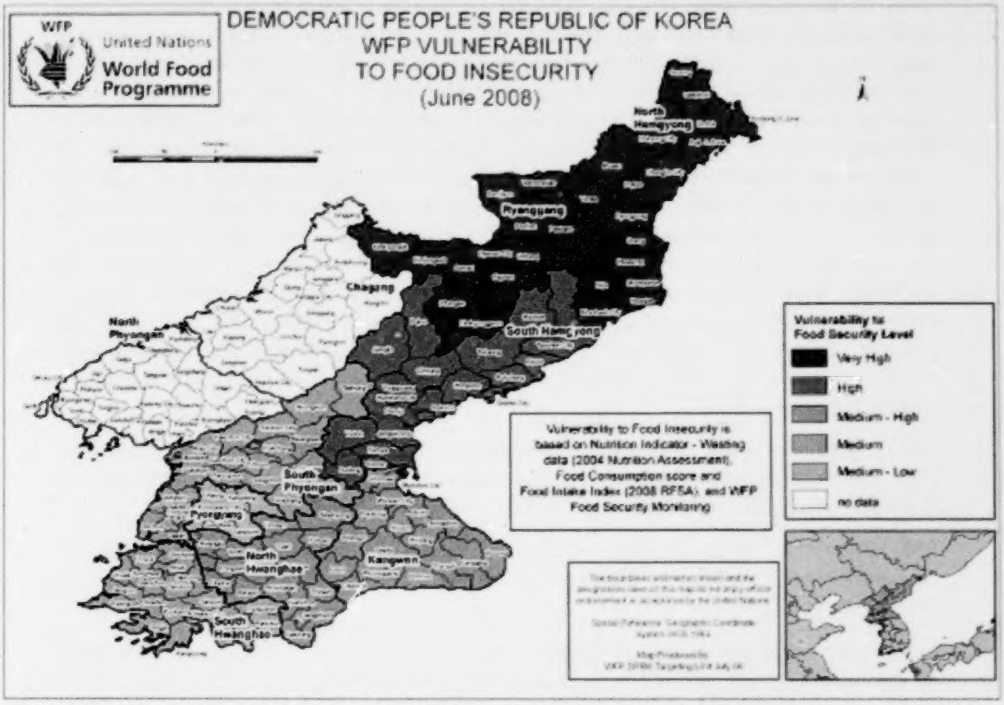
WFP
United Nations
World Food
Programme
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
WFP VULNERABILITY
TO FOOD INSECURITY
(June 2008)
North Hamgyong
Ryanggang
Chagang
South Hamgyong
North Phyongan
South Phyongan
Pyongyang
North Hwanghae
South Hwanghae
Kangwon
Vulnerability to Food Insecurity is based on Nutrition Indicator - Wasting data (2004 Nutrition Assessment), Food Consumption score and Food Intake Index (2008 RFSA), and WFP Food Security Monitoring
Vulnerability to Food Security Level
Very High
High
Medium - High
Medium
Medium - Low
no data

Figure 4. Vulnerability to food insecurity[750]

531. On 30 November 2009, the government announced that it would exchange new currency for old currency at the rate of 100:1. DPRK citizens were given only one week to exchange their old notes for the new currency. Strict limits were imposed on the amount of currency they were allowed to exchange.[751] According to state-controlled media, the official purpose of the reform was to "defend the interest of the people by stabilizing and improving their lives."[752] In particular, the government aimed first to combat inflation and second to reduce the role of the market, restoring the centrally planned economic system.[753] A former professor in the DPRK, Mr Cho Myong-chol, now at the Korea Institute for International Economic Policy in Seoul, said, "*After failing to shut down private markets in North Korea, currency reform was probably the only option left to neutralize the wealthy merchant class.*"[754] Mr Cho added that the currency reform was aimed at restoring the ruling Kim family's hold on power. He said that the DPRK's new class of wealthy merchants are not the traditional elite and include many people who are not "ideal" communists and could become threats to the current leadership.

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[750] FAO/WFP, "Executive Summary: Rapid Food Security Assessment: Democratic People's Republic of Korea", June/July 2008.

[751] Scott Snyder, "North Korea Currency Reform: What Happened and What Will happen To Its Economy?", The Asia Foundation, 31 March 2010, p. 4. See also "North Korea revalues currency, destroying personal savings", *Washington Post*, 2 December 2009.

[752] Exhibit T8, Ishimaru Jiro ed., *Rimjin-gang: News From Inside North Korea*, p. 169.

[753] Exhibit T8, p. 167.

[754] "N. Korea's Currency Reform 'a Bid to Cement Power'", *Chosun Ilbo*, 2 December 2009, http://english.chosun.com/site/data/html_dir/2009/12/02/2009120200656.html

532. The result of the currency reform appears to have caused further starvation. By 2009, the market price for rice was fluctuating around the 2,000 won. The number of street children began to increase again after the 2009 currency reform.[755] Less than two months after the currency reform, Premier Kim Yong-il, reportedly apologized directly to the representatives of the people of each region.[756] This was followed by the dismissal – and reported execution - of the head of the Finance Department of the Central Committee of the Workers' Party of Korea, Pak Nam-gi.[757] Some commentators stated that such an unprecedented admission of failure was probably due to the general discontent even among supporters of the leadership. The DPRK took a further step against the markets by banning the use of foreign currencies on 28 December 2009.[758] An official decree entitled "On severely punishing those who use Foreign Currency" was announced.[759] In addition, the authorities shut down the general markets. These actions had a major effect on people's access to food. They particularly affected those who made a living trading and selling goods in private or free markets. The extreme inflation that resulted from the currency reform decreased the food purchasing power of ordinary citizens and rendered people's savings almost worthless.[760]

533. Although the authorities shut down the markets, they failed to properly restart the PDS. This contributed to mass starvation in various parts of the country.[761] There was vast discontent among the population and riots reportedly took place.[762]

534. Despite all the evidence to the contrary, the delegation of the DPRK claimed in its Universal Periodic Review of December 2009 that "the issue of serious malnutrition is a thing of the past."[763]

535. The non-governmental humanitarian organization Good Friends reported the death by starvation of thousands of people in Sunchon and Pyongsong between mid-January and mid-February 2010. Statistics of the Workers' Party of Korea in Sinuiju cited by Good Friends indicated that, after 20 February 2010, about three hundred people died, while more than 1,000 households did not have food and were at risk of starvation.[764] Reportedly, in May 2010, the Workers' Party of Korea stated that there will be no immediate government support and announced that the government "cannot take any immediate measures due to

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[755] KBA, *2012 White Paper on Human Rights in North Korea*, p. 349.

[756] Mr. Kim Yong-il was considered at the time as number 3 of the DPRK regime. See "North Korea's Premier Apologizes Over Chaotic Currency Reform", *Associated Press*, 10 February 2010; "N. Korean technocrat executed for bungled currency reform: sources", *Yonhap News*, 18 March 2010. Available from http://english.yonhapnews.co.kr/northkorea/2010/03/18/72/0401000000AEN20100318004400315F.HTML.

[757] On the executions related to the currency reform, see also section IV.E.5.1.

[758] "North Korea bans foreign currencies", *USA Today*, 31 December 2009. Available from http://usatoday30.usatoday.com/money/world/2009-12-31-north-korea_N.htm.

[759] Exhibit T8, *Rimjin-gang: News From Inside North Korea*, pp. 156-157 (photograph of the official decree posted on the street in January 2010).

[760] KINU, *White paper on Human Rights in North Korea* (2012), p. 341.

[761] Scott Snyder, "North Korea Currency Reform: What Happened and What Will happen To Its Economy?", p. 3. See also "Economic 'Reform' in North Korea: Nuking the Won", *Time*, 3 December 2009. Available from http://content.time.com/time/world/article/0,8599,1945251,00.html.

[762] "North Koreans fear another famine amid economic crisis", *Los Angeles Times*, 25 March 2010. Available from http://articles.latimes.com/2010/mar/23/world/la-fg-korea-famine24-2010mar24; "North Korea Backtracks as Currency Reform Sparks Riots", *The Chosun Ilbo*, 15 December 2009. Available from http://english.chosun.com/site/data/html_dir/2009/12/15/2009121500361.html.

[763] A/HRC/13/13, para. 82.

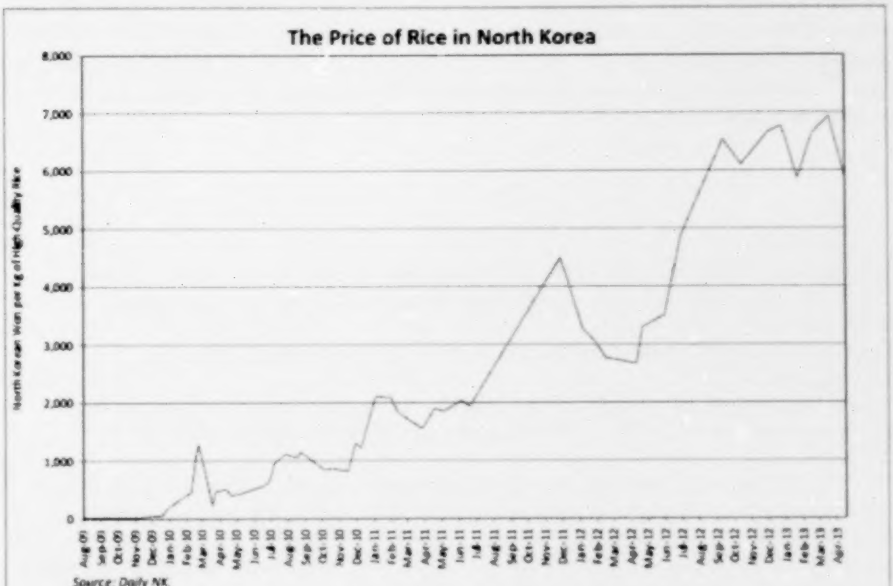
[764] Good Friends, "North Korea Today, No. 335", March 2010.

the worse than expected food situation."[765] As a measure of last resort, the authorities lifted restrictions on private markets again in 2010.[766]

536. In October 2011, the DPRK allowed the filming of children who were severely malnourished in rural areas of the DPRK. WFP reported that the PDS was distributing 200 gram rations, one third of an adult's normal daily requirement.[767] In 2011, the United Nations reported that more than 6 million people in the DPRK were in urgent need of food aid.[768] The situation of farmers remains critical in terms of food security.

- A farmer testified that in 2011, the manager of the collective farm told the farmers that they have not met their quota and that "*the farm had no obligation to feed them.*"[769]

537. Testimonies to the Commission submitted by persons who have fled the DPRK in the more recent past, including in 2013, describe the current economic and food hardship. Malnutrition remains a significant concern, especially in rural areas. Food may be available in the markets, but the price of items effectively excludes a large portion of the population. Ironically, in a country that has forcefully denounced capitalism, affordability continues to be a major issue for the poor and their situation appears to have worsened. The graphic below shows the evolution of the price of rice in the DPRK.



Source: Daily NK

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[765] Good Friends, "North Korea Today, No. 340", June 2010.

[766] "North Korea lifts restrictions on private markets as last resort in food crisis", *The Washington Post*, 18 June 2010. Available from http://www.washingtonpost.com/wp-dyn/content/article/2010/06/18/AR2010061802837.html.

[767] "Children pay for North Korea food crisis", *Reuters*, 6 October 2011. Available from https://www.youtube.com/watch?v=IOa0_Df62fo. WFP also released a video, "The Face of Hunger in DPR Korea", 12 September 2011. Available from https://www.youtube.com/watch?v=zAcwHZraZGs.

[768] WFP/ FAO / UNICEF, "Rapid Food Security Assessment Mission To The Democratic People's Republic Of Korea", 24 March 2011.

[769] TBG032.

Figure 5. Price of rice in the Democratic People's Republic of Korea between August 2009 and April 2013[770]

538. Alarming reports continue to emerge from the DPRK. In 2012, more than 10,000 people reportedly died of hunger in North and South Hwanghae Provinces.[771] These reports confirm information AlertNet, a humanitarian news service run by the Thomson Reuters Foundation, reported after visiting these provinces in 2011.[772] The information is further corroborated by testimonies of people who have recently departed the DPRK.

- One witness saw 12 people die of hunger in her region in 2012. One of them was a man who had nothing but grass to eat.[773]
- Another witness from Chongjin testified that in 2012 she did not receive any food rations. In 2013, she received one kilogram of rations in January and another kilogram in March. She stated that the food situation has become worse since Kim Jong-un came to power.[774]

539. In 2013, the DPRK authorities reportedly provided rations of 400 grams per day between January and May, and 390 grams per day in June and July, leading to an average ration size of 397 grams per day for the entire period from January to July 2013. It was also reported that some of the distribution included emergency stocks of rice ordinarily intended for wartime distribution.[775] According to the Office for the Coordination of Humanitarian Affairs (OCHA) "PDS rations in 2013 are following a similar pattern to 2012. Although supply is higher than in 2011, it remains well below the target of 573 grams per person per day."[776] Additionally, the ration size varies markedly depending on a person's age, as seen in the table below.

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[770] "Why the World Should Be Rallying For The 'Yuan-ization' Of North Korea", *Business Insider*, 22 June 2013. Available from http://www.businessinsider.com/north-korea-hyperinflation-dollarization-shift-2013-6.

[771] Asiapress International, "North Korea: Report on the Famine in the Hwanghae Provinces and the Food Situation", 2012.

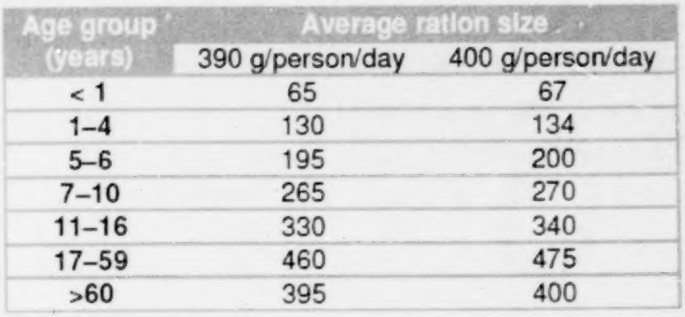
[772] "Special Report: Crisis grips North Korean rice bowl", *Reuters*, 7 October 2011. Available from http://www.reuters.com/article/2011/10/07/us-korea-north-food-idUSTRE7956DU20111007.

[773] TBG032.

[774] TLC042. Other sources confirm these statements: Amnesty International, "Starved of Rights": North Koreans forced to survive on diet of grass and tree bark, 15 July 2010; Will Morrow, "Famine threatening millions in North Korea", World Socialist website, 15 October 2011. Available from http://www.wsws.org/en/articles/2011/10/kore-o15.html; "North Korea faces famine: 'Tell the world we are starving'", *The Telegraph*, 16 July 2011. Available from http://www.telegraph.co.uk/news/worldnews/asia/northkorea/8641946/North-Korea-faces-famine-Tell-the-world-we-are-starving.html; "Hunger Still Haunts North Korea, Citizens Say", *NPR*, 10 December 2012. Available from http://www.npr.org/2012/12/10/166760055/hunger-still-haunts-north-korea-citizens-say; "The Dangers of the Coming North Korean Famine", *US News Weekly*, 12 November 2012. Available from http://www.usnews.com/opinion/blogs/world-report/2012/11/12/the-political-consequences-of-famine-in-north-korea; "The Cannibals of North Korea", *Washington Post*, 5 February 2013. Available from http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/05/the-cannibals-of-north-korea/; "The North Korea we rarely see", *CNN*, 12 April 2013. Available from http://edition.cnn.com/2013/04/12/world/asia/north-korea-we-rarely-see/.

[775] "PDS Distribution Volumes Rise in 2013", *Daily NK*, 7 August 2013. Available from http://www.dailynk.com/english/read.php?cataId=nk00100&num=10815.

[776] OCHA, "DPR Korea 2013: Humanitarian Needs and Priorities", p. 6.



Age group (years)	Average ration size	
	390 g/person/day	400 g/person/day
< 1	65	67
1–4	130	134
5–6	195	200
7–10	265	270
11–16	330	340
17–59	460	475
>60	395	400

Figure 6. Ration sizes by age group and average ration sizes[777]

(f) Impact on various groups

540. The failures of the PDS and the period of mass starvation have profoundly impacted the lives of many people in the DPRK. The Commission focuses on three specific groups because of the wider implications of their suffering.

(i) *Impact on children*

541. In its country report to the Universal Periodic Review in 2009, the DPRK government reported that "The state has invariably maintained, ever since the early days of its founding, the principled stand that children are the future and the 'Kings' of the country."[778] However, children have been among the most affected by the dire food situation. World Bank statistics indicate that infant mortality in the DPRK increased from 45 per 1000 live births in 1990 to 58 per 1000 live births in 1999.[779] The DPRK declared in 2002 that the infant mortality rate increased from 27 per 1000 live births in 1993 to 48 per 1000 live births in 1999.[780]

542. Apart from killing many children, hunger and starvation also have the severe negative impacts on the long-term development of infants and children. According to FAO:

> Malnutrition is especially serious for infants during the first 1000 days of life (from conception through the age of two), and for young children and has largely irreversible long-term effects on the ability of children to grow and learn, and to develop into productive adults later in life. This can restrict the development potential of whole societies and nations, and create a costly and continuing health and humanitarian burden for the country.[781]

543. The 1998 United Nations nutritional survey showed a 62 per cent rate of stunting among children under 9 years old.[782] This level of stunting is considered "very high"

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[777] FAO/WFP, "Crop and Food Security Assessment Mission to the Democratic People's Republic of Korea", 28 November 2013, p. 30.

[778] A/HRC/WG.6/6/PRK/1.

[779] The World Bank Group, "Poverty reduction and Economic management/Human Development/Development Economics", May 2001, p. 27.

[780] Second Periodic Report submitted in May 2002 to the Committee on Economic, Social and Cultural Rights (E/1990/6/Add.35).

[781] FAO, Committee on World Food Security, "Coming to terms with terminology" (CFS 2012/39/4).

[782] Stunting reflects shortness-for-age; an indicator of chronic malnutrition. It is calculated by comparing the height-for-age of a child with a reference population of well-nourished and healthy children. According to the UN Standing Committee on Nutrition's 5th Report on the World Nutrition Situation

according to the WHO classification (see below, figure 7). The high stunting rate indicates that starvation started at the end of the 1980s, as the 9-year olds among the children found to be stunted in 1998 had probably faced chronic malnutrition since 1989.[783]

Indicator	Severity of malnutrition by prevalence ranges (%)			
	Low	Medium	High	Very high
Stunting	<20	20-29	30-39	>=40
Underweight	<10	10-19	20-29	>=30
Wasting	< 5	5-9	10-14	>=15

Figure 7. WHO classification for assessing severity of malnutrition by prevalence range among children under 5 years of age[784]

544. In 2002, with cooperation from the United Nations Children's Fund (UNICEF) and the World Food Programme, the government of the DPRK conducted a survey of 6,000 households with children younger than seven years using multiple-stage sampling methods. Data was collected on socio-demographic variables, use of WFP food aid, and anthropometric measures of the youngest child in the household. Although the prevalence of wasting[785] had decreased between 1997 (16.5 per cent) and 2002 (8.2 per cent), the prevalence of stunting had not changed (38.2 vs. 39.4 per cent).[786]

545. The country suffered from serious economic difficulties starting from the mid-1990s, causing serious deterioration of people's health, in particular that of women and children. Supply of nutritious foods, nutritional and medical care significantly improved the situation from the early 2000s, the DPRK claimed before the Human Rights Council.[787] However, information collected by the Commission contradicts this claim. According to a 2009 UNICEF report, DPRK was one of 18 countries with the highest prevalence of moderate and severe stunting among children aunder the age of five years. Between 2003 and 2008, 45 per cent of children under five in the DPRK were stunted. For the same age group, nine per cent were suffering from wasting and seven per cent were severly

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(2005) almost one third of all children are stunted. (WFP, http://www.wfp.org/hunger/glossary). Stunting is used for measuring achievements of the Millennium Development Goals.

[783] EBG007.

[784] World Health Organization, "Global Database on Child Growth and Malnutrition". Available from http://www.who.int/nutgrowthdb/about/introduction/en/index5.html.

[785] Wasting reflects a recent and severe process that has led to substantial weight loss, usually associated with starvation and/or disease. Wasting is calculated by comparing weight-for-height of a child with a reference population of well-nourished and healthy children. It is often used to assess the severity of emergencies because it is strongly related to mortality. (WFP, available from: http://www.wfp.org/hunger/glossary).

[786] Daniel J. Hoffman and Lee Soo-kyung, "The Prevalence of Wasting, but Not Stunting, Has Improved in the Democratic People's Republic of Korea", *Journal of Nutrition*, vol. 135, No. 3 (2005), pp. 452-466.

[787] A/HRC/WG.6/6/PRK/1.

underweight.[788] The most recent UNICEF-financed nutritional survey concluded that 27.9 per cent of the country's two year olds are afflicted by stunting and 8.4 per cent of all children in that age group are severely stunted.[789] The rate of stunting therefore remains high according to the WHO classification.

546. The Commission understands from nutritionists that retarded growth and development in the youngest years cannot be later regained or compensated for. Chronic malnutrition increases with age and reaches a plateau from three years of age but is irreversible after two years of age.[790] The incidence of stunting is not only concerning subject of grave concern from the standpoint of survival and physical growth but also for the overall development of children.[791] Chronic malnutrition leading to stunting can also have long-term effects on cognitive development, school achievement, and economic productivity in adulthood and maternal reproductive outcomes.[792] The intergenerational effect of stunting also needs to be considered. A woman of short stature and low weight is at greater risk of giving birth to a child of short stature and lower weight.[793]

547. Chronically malnourished children are also more susceptible to a variety of diseases. According to various reports, including the DPRK's own report to various international organizations such as the World Health Organization, UNICEF and the International Federation of Red Cross Societies, over 60 per cent of DPRK children under the age of five suffered from acute respiratory infections and over 20 per cent suffered from diarrhoea in 2002. During that period, the death rate from these diseases reached almost 80 per cent. Some 40 to 50 per cent of children visiting clinics were suffering from diseases caused by contaminated water. During the monsoon season the rate shot up to 60 to 70 per cent.[794]

548. The dire food situation in the DPRK also caused a very high number of children to become homeless (the so-called *kotjebi*).[795] Some lost their parents; others were abandoned in the marketplaces or in the waiting rooms of railroad stations because their families had

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[788] UNICEF, "Tracking Progress on Child and Maternal Nutrition: A survival and development priority", November 2009, pp. 11 and 104. Available from http://www.childinfo.org/files/Tracking_Progress_on_Child_and_Maternal_Nutrition_EN.pdf.

[789] UNICEF, "Democratic People's Republic of Korea Final Report of the National Nutrition Survey 2012", March 2013. Available from http://www.unicef.org/eapro/DPRK_National_Nutrition_Survey_2012.pdf.

[790] UNICEF, "DPRK National Nutrition Survey 2012", March 2013.

[791] Kristen Devlin, "Stunting Limits Learning and Future Earnings of Children", Population Reference Bureau, October 2012. Available from http://www.prb.org/Publications/Articles/2012/stunting-among-children.aspx; World Bank, http://worldbank.org/children/devstages.html. "The Dutch Famine Birth Cohort Study", by the departments of Clinical Epidemiology and Biostatistics, Gynecology and Obstetrics and Internal Medicine of the Academic Medical Centre in Amsterdam, in collaboration with the MRC Environmental Epidemiology Unit of the University of Southampton in the United Kingdom, found that the children of pregnant women exposed to famine were more susceptible to diabetes, obesity, cardiovascular disease, microalbuminuria and other health problems. Moreover, the children of the women who were pregnant during the famine were smaller, as expected. However, surprisingly, when these children grew up and had children those children were also smaller than average. These data suggest that the famine experienced by the mothers caused some kind of epigenetic changes that were passed down to the next generation.

[792] Kathryn G. Dewey and Khadija Begum, "Long-term consequences of stunting in early life", *Maternal and Child Nutrition*, vol. 7, suppl. 3 (2011), pp. 5–18.

[793] Cesar G. Victora and others, "Maternal and child undernutrition: consequences for adult health and human capital", *Lancet*, vol. 371 (2008).

[794] Center for Children Medicine Support Inc., "Symposium on the Health Conditions of North Korean Children", Sejong Cultural Center, 14 November 2002.

[795] On the situation of street children, see also section IV.C.1.

no means to feed them and received no support from the state. According to article 20 of the Convention on the Rights of Child, "A child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the state." In May 2002 the DPRK government declared in its second report to the CRC that it was taking measures to provide family environments for children who had lost their parents and that it was paying great attention to child rearing at both the familial and societal levels. The government claimed that most orphans are sent to institutions where they can benefit from government protection.[796]

549. The Commission heard that there were different types of orphanage-like structures for children in the DPRK: a system of regular orphanages known as *ilban*; institutions called *gyebumo* (literally "step-parent") and *guhoso* facilities for street children.[797]

550. In 1997, facilities called "9-27 camps" were established in every county to crack down on the unauthorized movement of people and in particular children searching for food.[798] It is also reported that "the custody facilities which serve the purpose of protecting street children resemble in fact a detention facility, rather than a protection facility for children, and children accommodated in the centres are deprived of education and exploited for labour".[799] Humanitarian agencies have never had access to these facilities.[800]

- At the Seoul Public Hearing, Mr Kim Hyuk described the situation in the orphanage where he was placed by his father in 1995. He said that in 1997 "*twenty four out of 75 orphans passed away from starvation… internally there was no food subsidized to the orphanages. So what we ate at the time was the remainder of the corn. We dried it and we grinded and turned it into a powder. That's what we got, but it does not contain any nutrition and because of that, we got constipation…. There was nothing to eat in the orphanage. In 1996 and 1997, the orphanages tried to release as many children as possible because they didn't have anything to give to the kids. So they thoughts that kids were better off begging in the streets. It would be better that starving to death sitting in the orphanage.*"[801]
- One witness was 11 years old when she was caught and sent to a *guhoso* in Gandong with six other children. She said that children who did not have enough food during the Ardous March or who were left behind by fleeing parents were put in that detention facility. In the *guhoso*, she met children who had been there for one year. When they first arrived, they were told to stand on a chair, and were beaten with a thick leather belt. Children were put in underground rooms with small windows at the top of the walls. The witness was put in a cell with three boys (between 14 and 15 years old) and a 12 year old girl. The children must sit all day, they were not allowed to play, and were only allowed to go outside to empty the toilet once per week. Children tried to make themselves sick by eating sand or swallowing spoons in the hope they will be permitted to leave. They were fed with a

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[796] CRC/C/65/Add.24.

[797] Confidential interview.

[798] The name reportedly refers to the date of 27 September 1995 when Kim Jong-Il issued the edict requesting their establishment. Amnesty International, "Starved of Rights", p.16.

[799] Citizens' Alliance for North Korean Human Rights (NKHR), "Child is the King of the Country, Briefing Report on the Situation of the Rights of the Child in the DPRK", 2009, p. 22.

[800] See for instance, Doctors Without Borders, "MSF Calls on Donors to Review Their Policy in DPRK", 30 September 1998. Available from http://www.doctorswithoutborders.org/press/release.cfm?id=460.

[801] Seoul Public Hearing, 22 August 2013, morning (00:08:57).

small amount of salty soup with a little bit of radish and flour, two or three times a day. She remembers always being hungry.[802]

551. Access to public services and in particular health services by *kotjebi* is very concerning.

- A former nurse from North Hamgyong Province saw many *kotjebi* die in the hospital in which she worked as they could not afford basic necessities. She told the Commission: *"I saw a lot of kotjebi die. I was responsible for assisting them in the hospital and trying to improve their hygiene, but because they did not have clothes to keep warm in, they would sleep next to the stores of used coal [from the hearth] and get crushed and suffocate under the coal as it slid down from the pile."*[803]

552. Since the 2009 currency reform, the economic situation worsened in the DPRK and the number of *kotjebi* has reportedly increased.[804]

- A former high level official testified that in August 2010, Kim Jong-un issued an order to SSD and MPS to get rid of *kotjebi* and homeless adults in Pyongyang before holding the Third Conference of the Workers' Party of Korea that took place on 28 September 2010 and prepared his succession to become the Supreme Leader. SSD and MPS brought in additional units from the provinces and organized them into a shock crackdown unit. Based on the severeness of their wrongdoing, those caught were to be sent to ordinary prison camps, short-term forced labour detention facilities or "rehabilitation homes" for *kotjebi* in their provinces of origin. After the operation SSD and MPS reported back to Kim Jong-un that a very large number of *kotjebi* and other unregistered citizens had been arrested and sent back to their home provinces for detention in the said institutions.[805]
- The Commission also reviewed secretly filmed video footage showing child homelessness. The video depicted *kotjebi* in Pyongyang markets in 2012 and in a different province in 2011, rummaging for food.[806]

553. The Commission is concerned about the DPRK's continued obstruction of access by humanitarian agencies and non-governmental organizations to children in all regions. In addition, when access is granted, humanitarian organizations are generally prevented from conducting a standard assessment of children in institutions and hospitals.

(ii) *Impact on women*

554. The DPRK is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which also incorporates specific obligations regarding rural women.[807]

555. As noted above,[808] despite the implementation of laws to engender equality between the sexes, gender equality in the DPRK has not been realized, especially at work and in the family. Traditionally, the responsibility of obtaining and preparing food for the family has

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[802] TSH020.

[803] TSH051.

[804] KINU, *White Paper on Human Rights in North Korea* (2013), p. 431.

[805] TJH004.

[806] See testimony of Mr Ishimaru Jiro, Tokyo Public Hearing, 29 August 2013, afternoon.

[807] Article 14, CEDAW.

[808] See section IV.B.

been borne by women alone. During the famine this gendered role remained unchanged. However, finding food became more difficult.[809]

556. The economic burden on women also increased during the 1990s as a result of the economic decline and the strict requirements on men to report to their state-assigned workplace even if it was not functioning or salaries and rations were reduced or no longer being paid.[810] Due to the reduced rations and salaries from state employment and limitations on men, women were required to take on additional economic activities aside from their usual chores. At the same time, the domestic burden on women dramatically increased, as mechanisms that had been put in place to alleviate domestic work were significantly reduced because the social welfare system collapsed. For example, the operating hours of childcare facilities and education institutions were shortened, or the services ceased to exist all together.[811] Women, already bearing the increasingly difficult burden of finding adequate food for their family's survival, were also faced with increased economic, domestic and physical workloads.

557. Many women began their own economic activities to acquire the goods they required. The private market became the main means of obtaining food to support their families when food rations and wages were unavailable. At the same time, the state put in place strict measures in order to limit the market activities.[812] State enforced restrictions that only women over 40 years old could trade on the markets left the majority of young women in a very difficult situation in terms of access to food. This is thought to have driven the increase in prostitution in the country as transactional sex became the sole means of survival for young women, shut out from state-employment and unable to work in the private market.

558. Women also faced physical challenges in accessing the markets. Trading often required transporting heavy loads. However due to restrictions on transportation, women were often forced to carry 30 to 50 kilogram loads on their backs, traveling between markets and homes or even different provinces to sell their goods. As women started to move their goods on bicycles, the state also began to restrict the use of bicycle by women and imposed fines on women for doing so or for wearing trousers.[813]

559. The food crisis has also caused many women to leave the DPRK.[814] Because women have the primary role in obtaining food, they have represented the majority of DPRK nationals leaving the country since 2002 as they have gone in search of food and job opportunities in China.

- At the Seoul Public Hearing, Ms P described her experience of being repatriated 4 times from China: *"crossing the border was not an easy thing to do, but at least, it's better than just…dying in North Korea. If I went to China I thought I would have the least means to survive."*[815]

560. Women's activity in the underground economy during the food crisis has been a crucial factor in increasing their economic independence and self-reliance. However, as a

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[809] Hazel Smith, *Hungry for Peace: International Security, Humanitarian Assistance, and Social Change in North Korea*, p. 89.

[810] Lim Soon-hee, "The Food Crisis and the Changing Roles and Attitudes of North Korean Women", p. 38.

[811] KBA, *2012 White Paper on Human Rights in North Korea*, p. 337.

[812] Ibid., p. 341.

[813] NKHR, *"Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK, Briefing Report"*, May 2013, p. 28.

[814] See section IV.C on related issues of trafficking in women.

[815] Seoul Public Hearing, 21 August 2013, afternoon (01:32:00).

result of the male-dominant, patriarchal family culture,[816] women in the DPRK, particularly mothers in the family, have experienced severe deterioration in their health, largely because they either skipped or reduced portions of their meals for the benefit of other family members. As mothers fed their families first, they typically ate barely one meal per day.[817]

(iii) *Impact on low-ranking military*

561. The DPRK has long been unable to provide its oversized army with an adequate level of food.[818] Officers have, however, been prioritized in the provision of food.

562. Food shortages affecting ordinary soldiers began in the late 1970s and became even more apparent in the early 1990s. Several witnesses described soldiers starving to death because of insufficient ration allocations to the army.

- At the London Public Hearing, former KPA soldier Mr Choi Joong-hwa testified:

  "In 1987, I myself suffered malnourishment. People in the military wondered what had happened to their food supply and other necessities. They were told that it was because North Korea was being isolated by other members of the international community."[819]

- A former KPA officer stated that food for the military became scarce in the early 1990s. In 1991, a patriotic rice donation campaign was launched, asking every household to save 10 kilograms of rice and donate it back to the government to feed the military. He estimated that at the time there was a 3-4 per cent malnutrition rate among soldiers.[820]

- At the London Public Hearing, Mr Kim Joo-il, who used to be a captain in the KPA, explained that soldiers faced ration cuts:

  "The rations provided to soldiers was 800 grams per day. After Kim Il-sung died and Kim Jong-il came to power, he reduced that amount to 600 grams and this meant the bowl of rice we got would rise slightly over the rim of the bowl, not like a large mountain but like a small mound."[821]

563. Access to food for ordinary soldiers was further impacted by what Mr Andrew Natsios calls the "militarization of agriculture".[822] Starting in 1997, the central authorities dispatched soldiers to the state farms in order to increase able-bodied labour and to prevent hoarding as the famine swept across the country.[823] Farmers used to bribe the military with

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[816] Lim Soon-hee, "The Food Crisis and the Changing Roles and Attitudes of North Korean women", p. 26.

[817] Hazel Smith, "Crimes against Humanity in North Korea? Unpacking 'Common Knowledge' about Violations of the Right to Food," KINU, *UN Human Rights Mechanisms & Improvement of Human Rights Conditions in North Korea*," (Seoul, 2013), pp. 235, 245.

[818] KINU, "Relations between corruption and human rights in North Korea", 2013, p. 35. Hazel Smith states that "There were no indications that the ranks of the army were given excessively large rations, but unlike the general population they were more or less assured of a basic food supply all year around. These were basic rations, however, and ordinary soldiers of the million-strong army often remained hungry, as did their families, who did not receive preferential treatment simply because a son or daughter was serving in the armed forces," Hazel Smith, *Hungry for Peace: International Security, Humanitarian Assistance, and Social Change in North Korea*, pp. 87-88.

[819] London Public Hearing, 23 October 2013, session 3 (00:25:55).

[820] TJH027.

[821] London Public Hearing, 23 October 2013, session 4 (00:24:18).

[822] Andrew Natsios, *The Great North Korean Famine*, p. 117.

[823] Stephen Haggard and Marcus Noland, *Famine in North Korea*, p. 111; Andrew Natsios, *The Great North Korean Famine*, pp. 117 ff.

food. Therefore, the soldiers' food situation varied depending on whether they were serving in rural or urbanized areas. Soldiers were not allowed to engage in market activities or other coping mechanisms that could have allowed them to compensate for their insufficient rations.

- At the London Public Hearing, Mr Choi Joong-hwa said that soldiers like him *"starved because we did not have the freedom to take care of ourselves, the government was the only thing we could look up to."*[824]

564. The rations designated for the ordinary soldiers were often taken and diverted by corrupt high-level officers for their own personal gain.

- Former KPA captain Mr Kim Joo-il described the patterns of corruption he experienced: *"Because of the corruption ... when a certain amount was given to the higher ranking officers, by the time the low bottom soldiers would receive the rations, the rations given would be almost nothing."*[825]
- At the Tokyo Public Hearing, Mr Ishimaru Jiru said that high level officers embezzled food to sell it in the market for their own benefit:

  "At the very top of the hierarchy, the brigade leaders will take whatever they want and then leave the rest to the lower level ... the rank and file will only get very limited amount of food."[826]

565. Starvation within the military has also affected civilians' right to food. Starting in the early 1990s, hungry soldiers began to steal food from farms and private homes in order to compensate for the poor food rations provided by the government.[827]

- The Commission heard from Mr Kim Joo-il that stealing food from the population was a common practice and that officers even encouraged their troops to do so. He stated:

  "Soldiers had to steal in order not to die… Before entering the army, I had been indoctrinated to think that soldiers carry out honourable work and protect the population. But I soon discovered that this was far from the truth.... The standard practice of soldiers having to steal their food and supplies has made me question whether the army was really there to protect the people. The army was more like pirates."[828]
- Mr Choi Joong-hwa stated that because of the lack of food, soldiers started working against the people and did anything to get food. During the night, soldiers went to civilian houses and stole food, including livestock. He described that on one occasion, soldiers from a KPA unit stopped three civilian women traveling with their market goods at night. The soldiers ordered them to put down their goods, strip naked, turn around and sing a song. By the time they finished, the soldiers had run away with the goods and the women's clothes. Mr Choi said that high-level officers received official instructions from above that soldiers who stole food had to be severely punished and that soldiers were not allowed to leave their bases. However, it was clear that such instructions could not have suppressed the problem of looting:

  "But even though they tried to have full control over us, restricting us from leaving the military base, we couldn't just not leave. They once talked about putting barbed

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[824] London Public Hearing, 23 October 2013, session 3 (00:54:12).

[825] London Public Hearing, 23 October 2013, session 4 (00:24:53).

[826] Tokyo Public Hearing, 29 August 2013, afternoon (01:51:19).

[827] KINU, "Relations Between Corruption and Human Rights in North Korea", p. 36.

[828] Confidential interview.

> *wire on top of the wall [surrounding the barracks], but our attitude and our response was that nothing will stop the starving soldiers from escaping, going over the fence."*[829]

- One witness described that the military was already preying on civilians in the 1980s in Chongjin (North Hamgyong Province):

> *"Even if you worked all year on the communal farms, you wouldn't have enough food as the military would come and take it."*[830]

566. The DPRK government recognized long ago that it lacks the capacity to feed its huge army. In a speech given in December 1996, Kim Jong-il reportedly stated the following:

> "The People's Army is not being properly supplied with food. Seeing that we face temporary difficulties, the enemies rave that our socialism will fall as well, and they are looking for every possible chance to invade us. If they knew we did not have military provisions, the US imperialists might immediately raid us."[831]

When the Supreme Leader of the DPRK expressed his fear that the West might invade if they knew that even soldiers were suffering, "the famine was transformed from a nutritional crisis into a national security matter."[832]

567. At present, food rations provided to the military continue to be grossly insufficient. This problem was graphically illustrated by secretly filmed video footage of starving soldiers, which was recently taken in the DPRK and shown to the Commission by Mr Ishimaru Jiro at the Tokyo Public Hearing.[833] The DPRK government is still not capable of feeding its military. This has a direct negative impact on civilian access to food, since the government is forcing the general population to donate food for the military.

- One witness claimed:

> *"Soldiers go hungry to bed and can't sleep… In March 2013, there was a quarrel about food in Regiment 27 based in Musan, North Hamgyong Province. A soldier was caught eating leftover rice during the night. He was beaten by others soldiers. He was enraged to be treated like this because he was hungry. He used his gun and killed several soldiers."*[834]

2. Consequences of geographic segregation and discrimination

568. The right to adequate food, as any other human rights, must be implemented without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Any discrimination in access to food, as well as to means and entitlements for its procurement, constitutes a violation of international law. The principle of non-discrimination applies to state food distribution systems as well as the distribution of international humanitarian aid.

569. As pointed out by the Committee on Economic, Social and Cultural Rights,

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[829] London Public Hearing, 23 October 2013, session 3, and confidential interview.

[830] TSH004.

[831] "Kim Jong Il Berates Cadres for Food Anarchy" (in Korean), *Wolgan Chosun*, 20 March 1997, pp. 306-317; "Kim Jong Il, Speech at Kim Il Sung University, December 1996", *British Broadcasting Corporation*, 21 March 1997.

[832] Andrew Natsios *The Great North Korean Famine*, p. 40.

[833] Tokyo Public Hearing, 29 August 2013, afternoon (01:40:00).

[834] TBG027.

> Even where a state faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals.[835]

In this context, deprioritizing vulnerable populations constitutes a human rights violation.

570. Since its inception, the *Songbun* system of social classification has heavily impacted the lives of all DPRK citizens. People with lower *songbun* were discriminated against in terms of the quantity and composition of rations distributed by the PDS.

571. As described above,[836] the *Songbun* system is also crucial in determining education and employment opportunities. In turn, one's type of work determined the amount of rations received from the PDS. For example, those employed in special security functions were allocated 800 grams of food per day while regular labourers were entitled to only 600 grams.[837] In practice, the differences are even more pronounced and people of high *songbun* have privileged access to food.

- Andrew Natsios told the Commission at the Washington Public Hearing:

  "*The caste-based system gives greater access to resources for people of upper castes, and for the people of lower castes, they are discriminated against.*"[838]

- A former DPRK official who worked in agricultural research described the system of production and distribution of food in the DPRK:

  "*As far as the public distribution system is concerned, that was more a worker compensation system and not a social service system. As a ruler of society, if you have a limited quantity of food, you would give the food first to the most important people. The government kept most of the products for the central areas, the People's Army, the Party. The rest is distributed to others.*"[839]

- A witness from Hyesan (Ryanggang province) stated that people in high-ranking positions got three times more food compared to the ordinary people.[840]

572. Once food became scarce, the authorities decided to prioritize those people whom they considered crucial for maintaining the political system and its leadership at the expense of those deemed to be expendable. Testimonies confirm that food has been channelled towards the Party, critical industries, important military and security officers and the capital Pyongyang. Allocations differ not only with regard to the amount of food, but also in the quality of food, with rations including higher proportions of preferred grains, such as white rice.

- A former official from Pyongyang said: "*The famine did not have any impact on us. We obtained everything as before.*" The official emphasized that instructions were given to prioritize distributions to party cadres in political committees and people's committees, SSD officers and workers in munitions factories.[841]

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[835] CESCR, General Comment No. 12, para. 28.

[836] See section IV.B.

[837] ROK Ministry of Unification, "Food rations by class: Understanding North Korea 2005", Education Center for Unification, March 2006, pp. 245-247.

[838] Washington Public Hearing, 31 October 2013, morning (00:23:35).

[839] TLC033.

[840] TAP001.

[841] TGC004.

- A former researcher in Pyongyang described that, *"during the famine there were no dead bodies in Pyongyang. I saw them when I visited relatives in the countryside. Seeing the dead bodies, I started distrusting the regime."*[842]
- A former agent of the KPA Escort Command, an elite force assigned to guard the Supreme Leader and his family, stated that, even during the famine, people in the Escort Command received "*good rations*". They were provided with three meals a day and with meat twice per week.[843]
- A former SSD agent acknowledged that he had many privileges. In particular he received rice of a very good quality even during the famine. According to that official, most of the food rations went to Pyongyang, the military and the security services. He used to get 1 kilogram of food rations (including pork, fish, oil and rice).[844]
- One witness who studied in Pyongyang, stated that life in the capital was much better than in her home province. *"The government thinks that the city of Pyongyang should survive even if the rest of the country starves. The food rations in Pyongyang were much more than what I received in my home province of South Hamgyong. The quality of food was also better, even though the best food was of course reserved to the top cadres."*[845]

573. Given that people with lower *songbun* are concentrated in certain geographical areas, this gives the food situation in the DPRK and its underlying discrimination a geographic dimension.

574. Some areas, such as Pyongyang, benefit from a privileged food situation, because the elites are concentrated there. Conversely, the remote northeastern regions have traditionally been areas, to which people were banished, including prisoners of war and groups purged in the 1950s and 1960s.[846] It is not surprising that they were the first to be abandoned by the state. As noted above, in 1994 the four provinces in the Northeast that were highly dependent on the PDS, namely North and South Hamgyong, Ryanggang and Kangwon, were cut from the distribution system.

- One expert described the concern as follows:

  "The Great Famine was driven by an absolute shortage of food, but also by inequalities in distribution. Differences in distribution priorities followed the Songbun system. The 'royal families' in Pyongyang were fed, while less or no food was sent to North Hamgyong were mostly people of lower songbun live."[847]

575. The Commission received a large amount of testimony and information pointing to the fact that once the DPRK finally requested international aid, the authorities wanted this aid to be focused only on Pyongyang and specific regions.[848] Access to northeastern regions was denied to humanitarian organizations.

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[842] TBG004.

[843] TSH019.

[844] TLC040.

[845] TJH019.

[846] See section IV.C.

[847] EJH002.

[848] See footage of the negotiations between DPRK authorities and the representative of the non-governmental organization CARE who tried to initiate programmes in Tongsin and Huichon in Chagang province. "The 1997 Famine Still Affecting North Korea Today". Available from https://www.youtube.com/watch?v=30-2sPGNGEw.

- In the Washington Public Hearing, Andrew Natsios stated:

> *"During the famine, we have substantial evidence, in the research I did and evidence from the World Food Programme, that the northeast region of the country was triaged. They actually did not allow any food to go into that area because the whole area has a very low songbun status in the system. It is where political dissidents even during the imperial period of the kingdoms in the nineteenth century, that is where dissidents were sent. There were uprisings there before so it has always been viewed as a seditious area of the country and rather dangerous, and the WFP, the NGOs, the ICRC, were not allowed into the three north-eastern provinces for almost two years during the famine."*[849]

576. The Commission acknowledges the role played by geographical, climatic and other elements in the decline of food availability in the DPRK. Nevetheless, the aforementioned patterns of discrimination find clear reflection in the following maps, which show large disparities between regions with regard to the prevalence of stunting and acute malnutrition.

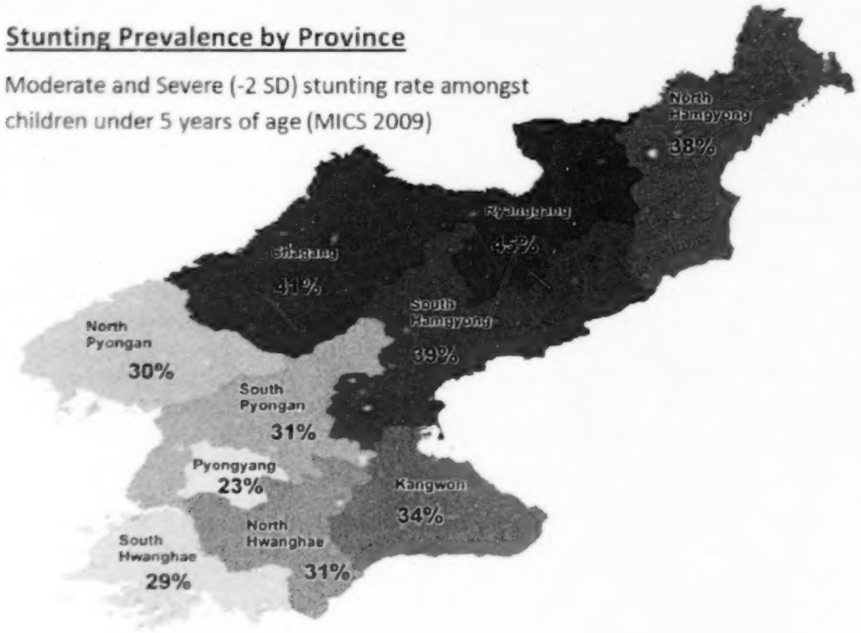
Stunting Prevalence by Province
Moderate and Severe (-2 SD) stunting rate amongst children under 5 years of age (MICS 2009)
North Hamgyong
38%
Ryanggang
45%
Chagang
41%
South Hamgyong
39%
North Pyongan
30%
South Pyongan
31%
Pyongyang
23%
Kangwon
34%
North Hwanghae
31%
South Hwanghae
29%

Figure 8. Stunting prevalence by province[850]

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[849] Washington Public Hearing, 31 October 2013, morning (00:23:53). This is detailed in Andrew Natsios, *The Great North Korean Famine*, particularly p. 89 onwards.

[850] Map produced by World Food Programme DPRK, April 2011 in "Overview of Needs and Assistance", 2012.

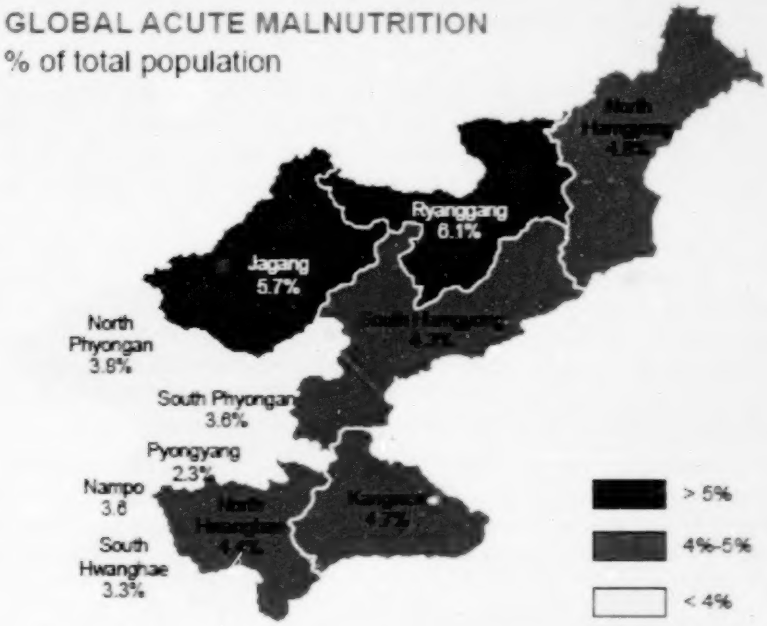
GLOBAL ACUTE MALNUTRITION
% of total population
North Hamgyong 4.8%
Ryanggang 6.1%
Jagang 5.7%
South Hamgyong 4.3%
North Phyongan 3.8%
South Phyongan 3.6%
Pyongyang 2.3%
Nampo 3.6
North Hwanghae 4.4%
Kangwon 4.7%
South Hwanghae 3.3%
> 5%
4%-5%
< 4%

Figure 9. Global acute malnutrition[851]

3. Awareness and concealment

577. Despite being aware of the worsening food situation, the authorities concealed relevant information from the outside world and their own population. This aggravated starvation in three respects. Firstly, by hiding the reality of starvation in the country, the DPRK violated its own population's right to information and hindered the people's ability to develop their own coping mechanisms at an early stage. A number of witnesses underscored that people starved to death in their homes, because they were waiting for the ration distributions to recommence. Secondly, concealing information led to a delay in obtaining international food aid that cost many lives. Thirdly, the secrecy relating to data has made it very difficult for the international community to provide targeted humanitarian and development assistance in the country.

578. According to the Committee on Economic, Social and Cultural Rights, violations of the ICESCR occur when a state fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger. In determining which actions or omissions amount to a violation of the right to food, it is important to distinguish the state's inability to comply with this obligation from its unwillingness to comply. Should a State party argue that resource constraints make it impossible to provide access to food for those who are unable to secure such access, the state has to demonstrate that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority,

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[851] OCHA, "DPR Korea 2013, Humanitarian Needs and priorities", p. 4. Available from http://www.wfp.org/sites/default/files/DPRK%20Overview%20Of%20Needs%20And%20Assistance%202012.pdf

those minimum obligations.[852] A state claiming that it is unable to carry out its obligation, for reasons beyond its control, needs to prove a) that this is the case and b) that it has made all efforts to obtain the necessary international assistance and does not impede the delivery of such assistance.

579. The authorities in the DPRK were well aware of the country's deteriorating food situation long before appealing for aid in 1995. State actions such as the reduction of rations, or the launch of campaigns such as "Let's eat two meals per day", shows that the authorities preferred to take steps that deeply affected the right to adequate food in the country to asking for international assistance.

580. In his memoirs, former high-level DPRK official Mr Hwang Jang-yop wrote: "People in North Korea were also starving in 1994, however, there wasn't any news that people starved to death."[853] In fact, all allegations of food shortages were categorically rejected by the DPRK. In January 1994, the spokesperson of the DPRK Agricultural Commission condemned the reports of hunger in the Western media as a "wicked deception to degrade the socialist image of the DPRK".[854] He argued that the DPRK had accumulated a large amount of grain stocks as an important strategic resource.

581. According to former DPRK officials who have given testimonies to the Commission, the highest level authorities in Pyongyang knew about the details of the famine. Each province had to regularly submit statistics on how many people had died from starvation and how many people were missing from their homes. Those documents were kept confidential.[855]

- At the Washington Public Hearing, Andrew Natsios argued that the system of measuring the height and weight of every child in school once a year was another source of information the state has at its disposition. He also noted that the decision to lower the minimum height requirements for an 18-year-old boy to enter the DPRK military was based on this type of data.[856]

582. The Commission finds that there was awareness about the famine situation all the way up to the Supreme Leader. Former officials stated that the provinces submitted detailed reports about the situation to the capital. Kim Jong-il also visited numerous locations in the country as part of his "military first" and "on-the-spot guidance" visits.[857] On these occasions, he could not have missed what was happening in the country.

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[852] CESCR, General Comment No. 12: The right to adequate food (1999), para. 17. See also CESCR, General Comment No. 3, para. 10.

[853] *Hwang Jang-yop Hoegorok* (Hwang Jang-yop's memoirs) (Published in Korean by Zeitgeist, 2006, translated by Daily NK).

[854] Spokesperson for the DPRK Agricultural Commission, North Korean Policy Trend, No. 27 (January 1994), p. 47 cited in Lee Suk, "The DPRK famine of 1994-2000: Existence and Impact", KINU, 2005, p. 8.

[855] TBG022, a former ministry official; TLC033.

[856] Washington Public Hearing, 31 October 2013, morning.

[857] Official DPRK sources have emphasised that Kim Jong-il's devoted his frequent field visits to military units and other work units "talking to soldiers and people and acquainting himself in detail with their living conditions." Between 1964 and 2002, Kim Jong-il reportedly "provided field guidance to at least 8,460 units, spending over 4,200 days." See "Kim Jong Il's Hobbies", *KCNA*, 24 May 2002. Available from: http://www.kcna.co.jp/item/2002/200205/news05/24.htm. "In the period from 1995 to 2001, he gave on-site guidance to 1,300 units, covering some 116,700 kilometres." See "Splendid fruition of Songun politics", *KCNA*, 9 April 2003. Available from: http://www.kcna.co.jp/item/2003/200304/news04/10.htm.

- At the London Public Hearing, former KPA officer Mr Kim Joo-il told the Commissioners how Kim Jong-il paid a visit to his military unit and was made aware of the lack of food suffered by the soldiers:

  "In 1996, Kim Jong-il had visited Cholwon-gun in Kangwon Province. He came to inspect the battalion himself and he asked to see the food that was being provided to the soldiers. So they showed Kim Jong Il a bowl of porridge. When they turned the bowl upside down there were only three grains of rice."

  Kim Jong-il became very angry and divested the battalion commander of his rank and sent him to a detention centre. However, the food situation for the unit did not improve.[858]

583. The practices of the authorities to conceal information have obstructed the development and delivery of targeted and efficient international assistance programmes to address the needs of the most vulnerable.[859] Human rights treaty bodies have also repeatedly requested the DPRK to provide them with reliable data and indicators.[860] Data, indicators and figures emanating from the DPRK and its authorities have been widely considered to be unreliable.

584. The data published by international organizations must be treated with caution.[861] The unreliability of the data comes, amongst other things, from the inability to perform random and free sampling and to freely access a large portion of the DPRK's territory. Therefore, the data published is generally an extrapolation to the whole country, based on data gathered in a limited portion of the country in very controlled settings.

4. Actions and omissions of the Democratic People's Republic of Korea

(a) Reluctance to change

585. Human rights law does not prescribe any specific type of economic system or nutritional food production strategy. However the national choices must allow the fulfilment of a state's obligations under international human rights law. The Commission shares the view of the Committee on Ecomonic, Social, and Cultural Rights:

> Every state will have a margin of discretion in choosing its own approaches, but the Covenant clearly requires that each State party take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food. This will require the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. It should

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[858] London Public Hearing, 23 October 2013, session 4 (00:25:27).

[859] Several agencies have expressed their concerns about the lack or unavailability of data which impact the work in their sector. "Students at primary schools need food and basic necessities such as books, pencils and notebooks. The government does not reveal any official statistics about ICT [information and communication technologies], not even the number of people using computers." (ICT, UNESCO, http://www.unescobkk.org/education/ict/themes/policy/regional-country-overview/north-korea/). See also World Health Organization, "WHO Country Cooperation Strategy Democratic People's Republic of Korea 2009-2013", p. 16.

[860] See CRC/C/15/Add.88 and CEDAW/C/PRK/CO/1.

[861] Human Rights Watch notes: "North Korea rarely publishes reliable data on basics facts of life in the country. In the few exceptional cases when it does do, the data is often limited, inconsistent, or otherwise of questionable utility. North Korea almost never allows foreigners to conduct research in the country. The research for this report was carried out in the context of these limitations." Human Rights Watch, "A Matter of Survival", May 2006.

> also identify the resources available to meet the objectives and the most cost effective way of using them.[862]

586. Regarding the right to adequate food, the Committee on Economic, Social and Cultural rights formulated a set of human rights based principles that national food strategies must comply with:

> The formulation and implementation of national strategies for the right to food requires full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.[863]

587. During the 2009 Universal Periodic Review, the DPRK government reported the following:

> Dissolution of the socialist market in the early 1990s and the tremendous financial and economic losses and depletion of material resources owing to the successive natural disasters that started in the mid-1990s brought the gravest difficulties to the economic development of the country. The most serious difficulty was the worsening of the condition of food supply. In 1996 alone, 3,180,000 tons of food was in short supply, thus causing a sharp decrease in the amount of provisions. Consequently, health condition of people in general deteriorated; infant and child mortality rate increased and diseases like infants' diarrhoea, respiratory tract infection and tuberculosis broke out.[864]

588. While factors beyond the state's control had an impact on the food situation, in attributing the famine solely to these factors, the DPRK grossly ignored the responsibility of its leadership, which imposed a system on its population that proved inadequate to fully implement the right to adequate food. More importantly, the authorities maintained this system despite its manifest insufficiencies.

589. As described above,[865] the DPRK chose to heavily industrialize its agriculture which made it dependent on industrial inputs and fuel. This made the country's agriculture reliant on external inputs, most of which it received on the basis of subsidized imports from friendly foreign states until the early 1990s. On the basis of an econometric analysis of DPRK agricultural production, scholars Heather Smith and Yiping Huang concluded the following:

> The dominant triggering factor in the crisis was the sharp loss of supplies of agricultural inputs following the disruption of the trade with the socialist bloc from the late 1980s.... The contribution of climatic factors to the agricultural crisis, as stressed by the DPRK's policymakers, was at most a secondary cause.[866]

590. The DPRK is subject to heavy annual rainfall and typhoons. A number of experts interviewed by the Commission pointed out that the agricultural policy has exacerbated the effects of these regular natural events. To obtain more arable land, forests were destroyed and mountains transformed into terraced fields. To counter the lack of fuel, trees were cut down to generate wood as a source of energy. This situation has exacerbated the propensity

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[862] CESCR, General Comment No. 12.

[863] Ibid.

[864] A/HRC/WG.6/6/PRK/1.

[865] See section IV.D.2.a.

[866] Heather Smith and Yiping Huang, "Trade disruption, collectivisation and food crisis in North Korea", in Peter Drysdale, Yiping Huang, and Masahiro Kawai, eds., *Achieving High Growth: Experience of Transitional Economies in East Asia* (London, Routledge, 2003).

of heavy rains to cause landslides. Erosion has led to riverbeds becoming silted, which means that flooding can occur even after relatively little rain.[867] The intensive use of land and fertilizers has also had a negative impact on the quality of the soil. The Commission received evidence from experts on how the overuse of chemical inputs increasingly diminishes the quality of arable land in the DPRK.[868]

591. The DPRK is responsible for these decisions. However the greater responsibility of the state lies in its decision to maintain this course, including the highly collective agricultural system, in the face of its overwhelming failure. Little was done to reform the system and to promote incentives for farmers to produce more.

592. Andrei Lankov, an well-known expert on the DPRK, made the following observations on the DPRK agricultural system:

> The forced switch to state farms was a common feature of nearly all Communist states, but the North Korean state farms had some peculiarities. Most significantly, farmers were allowed only tiny private kitchen gardens. In Stalin's Soviet Union, a farmer usually had a private plot whose size might exceed 1,000 m², but in Kim Il Sung's North Korea private plots could not exceed 100 m², and not all farmers were allowed to have plots even of such small size. The assumption was that farmers, being deprived of any additional source of income and calories, would have no choice but to devote all their time and energy to toiling in the fields of the state.[869]

593. In a recent article, Mr Lankov notes:

> If the government of the DPRK had conducted land reform along the lines of that which occurred in China during the 1990s, not one single North Korean would have died from starvation. In the late 1970s, China divided all land owned by the state between farmers. It dissolved all state-run farms which, incidentally, were similar to DPRK's cooperative farms. Ultimately, when Chinese farmers began to work on the land they owned themselves, the country's agricultural yield increased rapidly. Within five to six years of implementing the land reform, China's food production increased 1.3 times.[870]

594. A very similar conclusion was presented by agricultural expert Dr Kim Young-hoon at the Seoul Public Hearing. He noted that the DPRK's highly collectivized farming system is inefficient as there are no incentives for farmers. Mr Kim concluded that it needs to be reformed.[871] Much of the testimony that the Commission received from former DPRK citizens, including former farmers, point in the same direction.[872]

595. Despite the fact that some government-led reforms have been introduced – such as increasing the area of individual farming plots – the basic principles of the system have largely remained unchanged.[873] The DPRK government did not profoundly restructure the system in order to improve the food situation. Instead, the focus has generally been on managing particular emergencies and keeping the situation under governmental control.

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[867] Lee Suk, "Food Shortages and Economic Institutions in the Democratic People's Republic of Korea"; EBG003; Jean François, "Corée du Nord: Un régime de famine", *Esprit* (February 1999), p. 5.

[868] EBG002, ELC007.

[869] Andrei Lankov, *The Real North Korea*, p. 36.

[870] Andrei Lankov, "North Korea Makes Mistake by Not Emulating China-Style Land Reform", *Radio Free Asia*, 14 October 2013. Available from http://www.rfa.org/english/commentaries/famine-10142013151315.html.

[871] Seoul Public Hearing, 21 August 2013, morning.

[872] TLC033, TBG032.

[873] Andrei Lankov, *The Real North Korea*, p. 194.

Improvements in the economic and food situation in the DPRK since the worst period of mass starvation can be mainly attributed to spontaneous efforts of the population rather than reforms initiated by the state. Even the formal establishment of general markets may be seen as an attempt to recover control over the informal markets that were created in the mid 1990s. One expert observed that "markets are one of the regime's greatest domestic dilemmas—it loathes them and probably fears them, but it cannot close them down."[874]

596. Underlying the unwillingness to radically reform the system is an apparent fear of losing control over the population. A reported quote from Kim Il-sung that was related by Andrew Natsios during the Washington Public Hearing encapsulates the political calculation made by the authorities:

> *"Once the famine started they knew what was going on, and they chose not to take action to protect the population... There are reports of Deng Xiaoping telling Kim Il Sung that he needed to open up to the West, to move to a market economy, to reform his economy, and the apocryphal response from Kim Il-sung was 'if you open the window the flies will come in.... If we let them in, then the economy will get out of control. We will lose the control'."*[875]

597. Subsequent pronouncements by Kim Jong-il also show that the DPRK prioritized calculations of political power and ideology over the reality of the suffering of people. In a 1995 treatise, published while mass starvation was already underway in the DPRK, Kim Jong-il underscored the primacy of ideology:

> If the ideological bulwark falls down, socialism will be unable to defend itself no matter how great its economic and military power may be. On the other hand this proves how great a role ideology plays and how important ideological work is, to accomplish socialism.[876]

598. In a subsequent speech, delivered in December 1996 at Kim Il-sung University, Kim Jong-il explicitily justified his refusal to undertake structural reforms with the need to protect the political system and its leadership and prevent the type of popular uprising that occurred in Eastern Europe. Kim Jong-il said:

> In a socialist society, the food problem should be solved by socialist means. If the Party lets the people solve the food problem themselves, then only the farmers and merchants will prosper, giving rise to egotism and collapsing the social order of a classless society. The party will then lose its popular base and will experience meltdown as in Poland and Czechoslovakia.[877]

599. During the 2009 Universal Periodic Review, the DPRK government stated:

> The state pursues the policy of assuming responsibility for the supply of food to all population. The state has, in accordance to the Law on Food Administration, the labour law and the regulation on Distribution of Food, provided a cheap, timely and equitable supply of food to the workers, office employees and their dependents. However, the considerable decrease in the grain output due to serious natural disasters that repeatedly hit the country since the mid-1990s adversely affected the people's living in general, and in particular, the exercise of their right to adequate food. The Government, while meeting the pressing demands with a large amount of

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[874] John Everard, "The Markets of Pyongyang", Korea Economic Institute, Academic Paper Series, Vol. 6, No. 1, January 2011

[875] Washington Public Hearing, 31 October 2013, morning (00:16:26).

[876] Kim Jong-il, "Giving Priority to Ideological Work Is Essential for accomplish Socialism", 1995, available from: http://www.korea-dpr.com/lib/101.pdf

[877] As translated in John Everard, "The Markets of Pyongyang", quoting *Wolgan Chosun* of April 1997.

> food obtained through its appeal for international humanitarian assistance has taken measures to solve the food problem on its own through the increased agricultural production.[878]

600. In June 2012, the DPRK government reportedly adopted a new set of economic reforms. The Commission has received only limited information about these reforms. The main concept of the officially called "Economic Management System in Our Style" is to shift management powers from the state to individual factories, enterprises and farms.[879] As far as the agricultural sector is concerned, farmers should give 70 per cent of the total harvest to the state and keep 30 per cent for themselves. In the past, the state collected a certain amount of food regardless of the year's harvest. Under the new plan, the state's share was based on the five-year average harvest collected from each farm. Accordingly, farmers will receive a larger share when the harvest is plentiful, and less when the harvest falls short.[880] The Commission is not able to assess the results of the reforms or their actual level of implementation.

601. In his 2014 New Year's message, Supreme Leader Kim Jong-un called for "decisive improvement in guidance and management of economic projects". However, measures for agricultural reform and opening the economy were not mentioned in his speech.[881]

- Agricultural expert Dr Kim Young-hoon, who studied the aforementioned economic reform on the basis of information available outside the DPRK, was sceptical whether it would lead to marked improvements: "*The Kim Jong-un regime will also experience the same kind of capital shortage [as Kim Jong-il] and the system reform will not go forward… I am predicting that the situation will not get any better.*"[882]
- Another agricultural expert, who used to be a researcher at Pyongyang University, noted that even under the new system, farmers still have to hand over 70 per cent of their harvest to the state, which limited their incentive to produce more. Moreover, given the isolation of the DPRK from the world economy, farmers lack access to new technologies that are necessary in order to effectively increase the production.[883]

602. Andrei Lankov suggested that the reforms are fraught with uncertainties, but that first results are quite encouraging. He noted that Chinese experts who had recently visited

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[878] A/HRC/WG.6/6/PRK/1, para. 56.

[879] "*Uli sig-ui gyeongjegwanlibangbeob-ui wanseong-eul/naegag gwangyeja inteobyu sahoejuuiwonchig gosu, guggaui tong-iljeogjido*", [Completing our way of economy management method—Interview with a government official] *Choson Sinbo*, 10 May 2013. Available from http://chosonsinbo.com/2013/05/0510th-4/. See also Andrei Lankov, "How economic reforms are changing N. Korea's farming industry", *NK News*, 2 January 2014, http://www.nknews.org/2014/01/how-economic-reforms-are-changing-north-koreas-farming-industry/

[880] "North Korea's 'New Economic Management System': Main features and Problems", *Korea Focus*, October 2013 Available from: http://www.koreafocus.or.kr/design2/layout/content_print.asp?group_id=105092.

[881] KINU Center for North Korean Studies, "Analysis of North Korea's 2014 New Year's Address by Kim Jong-un and Domestic and Foreign Policy Prospects", Online Series CO 14-01.

[882] Seoul Public Hearing, 21 August 2013, morning (03:22:00).

[883] TLC033.

the DPRK have claimed that the reforms have produced an immediate 30 per cent increase in output.[884]

(b) Preventing and punishing alternative views

603. Instead of opening up a dialogue and engaging in a participatory approach with the population, in particular farmers, to find a solution to the food situation, the DPRK has used ideological indoctrination to preclude criticism throughout the years of crisis.

604. In 1991, the government launched the "Let's eat two meals a day" campaign. Later on, the Arduous March rhetoric was put in place to supposedly help people endure increased economic privations and keep them from thinking about and openly discussing alternative economic systems.[885] In this context, any critical remarks about underlying political reasons of the situation were considered a political crime and therefore harshly punished.

- One witness testified that the government kept promising that the population would eventually receive food and that even the Supreme Leader did not have enough food. The population was forced to attend periodic official lectures about the food situation, while the actual distribution of food was postponed. The content of these lectures was in particular focused on the fact that the Supreme Leader could not sleep well because of the lack of food for his population.[886]
- Another witness said that during the famine, compulsory lectures and education classes to boost the morale of the population were often imposed on the starving population. "*People were told that it was the Arduous March and everybody had to endure it. No one could complain. Otherwise they were sent to political prison camps.*"[887]

605. The DPRK government also blamed outside forces, especially the ROK and the USA, for the hardship the country was enduring.

- A high level official said he was aware that people were starving, but he did not do anything about it. He himself believed everything the Party said, including that the DPRK faced food shortages "*as a result of sanctions by capitalist countries against them.*"[888]
- At the London Public Hearing, Mr Kim Joo-il stated that near the demilitarized zone between the two Koreas, soldiers often found packages containing radios, rice and candy from the ROK that were sent by balloons that ROK citizens launched near the border. Mr Kim explained that soldiers received indoctrination training, and they were told that eating any of these ROK goods would make them sick and that their flesh would "*start to rot*".[889]

606. Alternative views on policies and programmes could not be freely expressed. The Commission received testimony from several people who were aware of the grave inefficiencies of the system and the need for reform but were not allowed to discuss the

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[884] Andrei Lankov, "How economic reforms are changing N. Korea's farming industry", NK News, 2 January 2014. Available from http://www.nknews.org/2014/01/how-economic-reforms-are-changing-north-koreas-farming-industry.

[885] See Kongdan Oh and Ralph C. Hassig, *North Korea Through the Looking Glass* (Brookings Institute, 2000), p. 55.

[886] TLC013.

[887] TBG028.

[888] TCC014.

[889] London Public Hearing, 23 October 2013, session 4 (00:59:30)

issue. Most did not even try to do so because they were aware of the possible consequences for them and their families.

- A former researcher of Pyongyang University stated that government officials knew that the collective farming system was not working but no real reform was initiated. He was frustrated with the stagnant situation and wrote a letter directly to the Supreme Leader. In his letter, he compared the productivity of collective farms and private farms, which was five times higher. He attached documents with his research results to corroborate his arguments. In response, he was threatened:

  "A central party person came to me after three months. He said that I had to deal with science and not with politics."[890]

(c) Confiscation and dispossession of food

607. In various circumstances, ordinary people have been dispossessed of their means of survival. Harvests were taken away from farmers without legal basis. Citizens were robbed of their food or dispossessed of international aid intended for them. Testimony given to the Commission confirmed the practice of soldiers looting food:

- According to one former soldier,

  "In the DPRK army, everyone had to take turns cooking for the other soldiers. When it was my turn, my commanding officer provided me with some rice, but with nothing to make sauce or side dishes. The night before my cooking assignment, one of the most senior soldiers in his unit woke me up. Other soldiers were already up. The senior soldier gave us bags and told us to go to the village and steal what we could. The looting was so good that I managed to make 6 side dishes. The next day, I was praised for this achievement in front of the whole unit."

  The witness stated that stealing from the population did not stop after the famine, but continued throughout his time in the army. As far as he is aware, it continues up to this day.[891]

- One person who used to work as coal miner stated that during the harvest season they received an order from the Party to give 70 per cent of their total harvest to the military.[892]

608. Witnesses confirmed that these practices are still ongoing.

- A farmer stated, *"In 2012, we were told that we could keep 90 per cent of the harvest. ... But when it was harvest time, the military came and took everything."* The same person reported death by starvation in her village during the same period.[893]

609. Testimony received by the Commission, in particular from former army officials and soldiers, confirm a pattern of diversion of international food aid by the military.[894] Civilians interviewed by the Commission had, in the vast majority of cases, not seen any humanitarian aid.[895] Some donors insisted on the presence of international observers during the distribution of food aid. Several witnesses who fled the DPRK mentioned that after the

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[890] TLC033.
[891] TJH044.
[892] TLC038.
[893] TBG032.
[894] TJH027, TJH044, TSH052.
[895] TBG015, TBG016.

international monitors had observed the distribution and left the area, the authorities forced the population to give back the majority of the food distributed to the authorities.

- One witness stated:

  "Food provided through humanitarian assistance was given to the authorities. I had to buy the food aid that was sold in the market. The food that had been distributed to the population had to be handed back to the authorities. They left the population with 500 grams of food instead of the 5 kilograms that were originally distributed."[896]

- A former high level DPRK official estimated that 80 per cent of the food was taken back after the international monitoring took place.[897]

- One witness testified that while he was at a military academy in Pyongyang, he and his colleagues received an order one day to remove their military clothes and insignias. They were then asked to put their fingerprints on a document stating that they would not reveal anything they were going to do. They were taken to the Nampo port and had to open 40 kilogram sacks of rice with United States and ROK logos, pour them into a machine and fill the rice into 50 kilogram sacks with no logos. They loaded the new sacks onto 30-40 unmarked trucks.[898]

- Another witness stated:

  "From 1996 to 1998, a lot of aid (food and fertilizer) came into the country via the Nampo port. From my house, I could see cars line up to collect the aid goods, usually marked with USAID and ROK labels. Military personnel would put on civilian clothes and paint over their vehicles' military number plates, so that they did not look like the military and could get the food. Military officers sold the rice and supplies to the black market in order to buy alcohol and cigarettes. They also came to our house and insisted we buy these items from them."[899]

- One witness described the same modus operandi in another part of the country. *"Because of my job, I saw food coming at the Chongjin port in 1998-1999, including aid coming from the United Nations. The North Korean guards used to wear plain clothes and pretended to be civilians in order to get food."* The witness said that he remembers boats with 20,000 tons of food approaching the Chongjin port.

  "When the United Nations officials left, the food was given to the military. The monitoring group of the United Nations usually wanted to check that the food was distributed. They had to pre-notify the field visit. The North Korean authorities used to take the United Nations officials to the food distribution centre. Once the United Nations officials left, the North Korean authorities took the food back from the population. At the time when all this was happening, you could see dead bodies on the streets, people who had died from starvation."[900]

- A former high level official was told by colleagues of Department No. 2 (Military Affairs) of the Central Committee of the Workers' Party of Korea how they proceeded when NGOs insisted on monitoring the food distribution. The authorities gave strict instructions to the population not to eat the food aid received. Instead, they were to give it secretly back to the authorities. The population was told that the rice distributed was needed to secure the survival of the military. People complied, because most families had a family member serving in the military. Families had to return the 20 kilograms of rice they received from NGOs in exchange for 1 kilogram of inferior corn provided by the government.[901]

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[896] TBG005.

[897] TBG020.

[898] TSH019.

[899] TSH052.

[900] TLC013.

(d) Criminalization of coping mechanisms

610. According to the WFP, food insecure households employ four types of consumption coping strategies.

- First, households may change their diet. For instance, households might switch food consumption from preferred foods to cheaper, less preferred substitutes.
- Second, households can attempt to increase their food supplies using short-term strategies that are not sustainable over a long period. Typical examples include borrowing or purchasing on credit. More extreme examples are begging or consuming wild foods, immature crops, or even seed stocks.
- Third, if the available food is still inadequate to meet needs, households can try to reduce the number of people that they have to feed by sending some of them elsewhere (for example, sending the children to a neighbours' house when those neighbours are eating).
- Fourth, and most common, households can attempt to manage the shortfall by rationing the food available to the household (cutting portion size or the number of meals, favoring certain household members over others, or skipping whole days without eating). [902]

611. In times of food shortage, some of these coping mechanisms were encouraged by the DPRK authorities. This included the consumption of wild foods, despite the medical risks associated with that strategy. However, the authorities prohibited the population from resorting to the most efficient coping mechanisms, such as movement in search of food, trade and other similar activities, in order to preserve their control over the population.

(i) *Freedom of movement*

612. During periods of food shortage, it is usual for people to move in search of food. However, the strict restrictions on freedom of movement imposed in the DPRK, which were maintained even during the worst period of mass starvation, denied the population the opportunity to effectively pursue this option.[903]

613. In the DPRK, any travel within the country requires a travel permit delivered by the local authorities. Persons traveling without a permit are subject to arrest, repatriation to their home county and punishment.[904] When the PDS was working, even with inadequate rations, people tended to remain in their place of residence in order to access PDS rations. However, when the PDS collapsed the authorities were unable to exercise the same level of movement control as before. Desperate people started moving around the country in search of food in order to survive. Instead of abolishing internal travel restrictions, people were

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[901] TJH027.

[902] WFP, "The Coping Strategies Index: A tool for rapid measurement of household food security and the impact of food aid programmes in humanitarian emergencies, Field Methods Manual", Second Edition, January 2008, p. 3.

[903] See section IV.C.

[904] See section IV.C.1.

still prohibited from leaving their home province without a permit during the famine. In December 1996, Kim Jong-il warned that the incipient population movement was causing chaos and disorder in the country and ordered the government to immediately take all necessary actions to prevent it.[905] Authorities established a network of ad hoc detention facilities to deal with illegal internal movement, including the movement of street children and children orphaned by the famine.[906]

614. The famine also created a surge of desperate people fleeing to China that started in the mid-1990s. Many DPRK citizens sought help from ethnic Korean relatives living in Chinese provinces bordering the DPRK. Others sought to work in China for food or money, which they used to buy for themselves and their families.[907] Instead of facilitating such coping mechanisms, the government used punishment and violence to deter people from crossing the border.

615. The Commission collected a large amount of testimony from people who went to China in search of food and were subsequently repatriated and imprisoned.[908]

- Ms Jo Jin-hye told the Commission that her father and pregnant mother were going back and forth to China looking for food. They were arrested, detained and tortured shortly after Kim Jong-il publicly called for stricter enforcement of the prohibition on crossing the border with China.

  "My mom and dad went to China together about two times and successfully got food for us such as rice and bean paste and cooking oil, etc. So I remember having a very good meal after they got back from China. And on their third trip on the way back home, they got caught. At that time, there were a lot of other North Koreans who got caught while going back and forth between North Korea and China. And it was not really a crime that would get us killed but at that time, Kim Jong-il made some announcements saying that we need to reduce the number of North Koreans going back and forth between North Korea and China. And to do that, [Kim Jong-il said] 'we need to make the gunshot sound loud'."[909]

  Ms Jo's father was tortured in detention. He died during his subsequent transfer to another detention centre. "*During the process of being transferred [between detention facilities], he was not able to eat and he was not provided any water to drink. He was also tortured in the previous detention facility and he had a lot of wounds on his body, so that basically killed him.*"[910]

- Mr Kim Gwang-il described how he secretly travelled to China to sell pine mushrooms since this was the only way for him to survive. Upon his forced repatriation from China, he was detained and tortured by the Ministry of People's Security. Based on an unfair trial, he was imprisoned at Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri.[911]

616. Despite the deaths of hundreds of thousands of people during the late 1990s, the authorities continued to apply criminal punishment for cross-border movement. Border guards were allowed to shoot to kill anyone crossing the border illegally, a policy that remains in place.[912] Especially harsh treatment was reserved for DPRK citizens who

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[905] Andrew Natsios, "The Politics of Famine in North Korea", p.12.

[906] Amnesty International, "Starved of Rights", p. 16.

[907] See section IV.C.

[908] See also section IV.C.

[909] Washington Public Hearing, 30 October 2013 (00:35:00).

[910] Idid. (00:36 :00).

[911] Seoul Public Hearing, 24 August 2013, morning.

[912] See section IV.C.2.

approached citizens of the ROK or Christian churches for help while in China.[913] Periods of imprisonment for people crossing for food varies from two to five years. Reportedly, in 2000, when the famine had already peaked, Kim Jong-il issued a decree to treat those who only crossed the border in need of food with a degree of leniency. However, this decree was only in force for a few months. Even during that time, people forcibly repatriated from China were still subject to arrest and punishment.[914]

617. The Commission notes that the DPRK Government apparently never contemplated pursuing the option of requesting the ROK to temporarily open the inter-Korean border so as to allow its starving citizens to cross into the ROK, where many could have received help from relatives and fellow Koreans.

(ii) *Other coping mechanisms*

618. For a long period, the DPRK government failed to officially acknowledge the economic changes occurring in the country including the de facto marketization. At most, officials described them as temporary emergency measures.[915] This position explains the DPRK government's repeated attempts to limit or even criminalize market activities. The government has been reluctant to accept the development of the markets despite their importance for people in need of food,because this was a mechanism in the country that fell outside its control.

619. In the 1999 Criminal Code, the chapter on "Offenses against the management of the Socialist Economy" comprised only eight articles. In 2004, the chapter was renamed "Offences against the management of the Economy" and expanded to 74 articles. Article 110 was introduced into the Criminal Code making it an offense to gain large profits by engaging illegally in unfair commercial activities. The offense is subject to two years of imprisonment in a labour training camp. In 2007, a series of "additional clauses" were introduced by way of a decision issued by the Presidium of the Supreme People's Assembly.[916] That decision introduced offenses such as the crime of illegal business operations. Extremely grave cases of smuggling jewellery and precious metals and illegally selling the state's resources were made subject to the death penalty.

620. The DPRK penal system has played a central role in the government's response to the coping strategies that DPRK citizens adopted in order to address the severe shortage of food. During the famine, the DPRK established an extensive system of detention facilities known as labour training camps (*rodongdanryundae*).[917] These and other short-term forced labour detention facilities were used to incarcerate those caught crossing the border into China, those involved in internal movement without permits, and those involved in market activity. The 2004 reform of the Criminal Code regularized these facilities. It established "labour training" for up to two years as the punishment for a growing number of economic and social crimes.

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[913] See section IV.C.2.

[914] According to Human Rights Watch (HRW), the decree from Kim Jong-il said, "If anyone crosses the border because they are in need of food, they shall live." This decree was effective between 16 February 2000 (Kim Jong-il's birthday) to 10 October 2000 (the fiftieth anniversary of the establishment of the Korean Workers Party). HRW, "The Invisible Exodus: North Koreans in the PRC". Available from http://www.hrw.org/reports/2002/northkorea/norkor1102.pdf.

[915] Meredith Woo-Cumings, "The Political Ecology of Famine: The North Korean Catastrophe and Its Lessons".

[916] See Decision No. 2483 of the Presidium of the Supreme People's Assembly, adopted on 19 December 2007.

[917] For details on the inhumane conditions prevailing in these detention facilities, see section IV.E.4 b).

- One witness commented that people were trapped in an impossible situation. Those who only did their work following the state's directions died from malnutrition. Those who tried to do something else to survive – such as engaging in market activities – likely got arrested.[918]

621. One aspect of the command-and-control response to the famine and its aftermath was the use of the police and the military to reassert authority over both the cooperative farms and the industrial workplace. In August 1997, the authorities issued a decree on the hoarding and theft of food. This decree stipulated the execution of any individual involved either in stealing grain or trading in it. Military units were deployed to farms to make sure that hungry farmers did not divert part of their farm's production in order to secure their own survival.

- One woman testified that she witnessed five public executions during the famine. The officials announced how much food had been stolen or wasted by the victim concerned. Then, the person was shot in the head.[919]
- Another woman testified that her husband was arrested for trading oil in 1996. He was sentenced to 11 years of imprisonment in an ordinary prison camp (*kyohwaso*). While he was in prison, she did not have money to bring him food. He died after a year in detention from hunger and hard labour. Subsequently, the witness's child starved to death, followed by the witness's mother and father. In December 1997, she crossed to China to find food and was sold into a forced marriage with an ethnic Korean Chinese man.[920]

622. The authorities also maintained strict control over communications during the famine. They prohibited people from contacting their relatives abroad for assistance. This prohibition remains in place. However, many DPRK citizens circumvent it by illegally contacting relatives abroad through so-called "brokers" or by using Chinese mobile phones that work in the proximity of the Chinese border. [921] Through brokers, people can also illegally receive remittances from relatives abroad. Pursuing help in this manner is extremely risky, and those caught are subject to severe punishment.

- One man testified that, in 2009, he was caught by the State Security Department (SSD) while calling abroad from his Chinese mobile phone. He was accused of spying, beaten and tortured. He stated that the SSD uses sophisticated electronic devices to trace mobile phones.[922]

5. Obstructing humanitarian assistance and access to the most vulnerable

623. In accordance with articles 2 (1) and 11 (2) of the ICESCR, each State has the obligation to ensure freedom from hunger individually and through international assistance and cooperation. If a State is unable to provide its population with adequate food, it must take all possible steps to ensure that people in its territory are free from hunger, including through proactively seeking external assistance. According to the Committee on Economic, Social and Cultural Rights, a State claiming that it is unable to carry out its obligation of ensuring freedom from hunger for reasons beyond its control, has the burden of proving

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[918] TSH038.

[919] TBG001.

[920] TBG010.

[921] For more details on the use of Chinese mobile phones, see section IV.A.

[922] TBG004.

that this is the case and that it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food.[923]

624. In this regard, States are also under an obligation not to arbitrarily reject humanitarian assistance. A number of parameters can be used to determine an arbitrary rejection of humanitarian assistance. States fail to respect their obligations if they reject assistance offered without providing any reasons, or if the reasons provided are based on errors of fact (for example, a denial of humanitarian needs without a proper assessment). States also act arbitrarily if they deny access for reasons that are not in line with their international obligations, for example, if a state rejects assistance offered in line with the humanitarian principles of humanity, impartiality, neutrality and independence despite being unable to ensure the necessary assistance through other sources.[924] Any diversion of international food aid contrary to the principle of distributing aid without discrimination based on humanitarian need also constitutes an arbitrary denial of aid and hence a violation of human rights including the right to food.[925]

625. Since the arrival of the first relief agencies in the mid-1990s, international organizations and non-governmental organizations have been working in extremely difficult conditions imposed by the DPRK authorities.[926] The Commission finds that the DPRK government has imposed movement and contact restrictions on humanitarian actors that unduly impede their access and are not justified by legitimate humanitarian or security considerations. Moreover, the authorities have deliberately failed to provide aid organizations with access to reliable data, which, if provided, would have greatly enhanced the effectiveness of the humanitarian response and saved many lives.

626. DPRK authorities resisted initial requests from international relief organizations to provide assistance to the northeast part of the country. World Food Programme aid did not reach the east coast before 1997. During the late 1990s, only one-fifth of the WFP's total aid went to feed the people of an area that contains one-third of the DPRK's total population.[927] The Commission received various explanations for this phenomenon, including the location of political prison camps and sensitive military installations in some of the affected counties.[928] However, the Commission also notes that humanitarian access was denied to an entire area, where populations of low *songbun* are concentrated.[929] Exhibit IV-2, displayed below, shows that, in 1995-1996, the DPRK government denied humanitarian access to most of the northeastern provinces where people were dying in very large numbers from hunger and starvation. The four provinces with no access to humanitarian aid (North and South Hamgyong, Ryanggang and Chagang) also correspond to those where the PDS distribution was first stopped.[930]

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[923] CESCR, General Comment No. 12, para. 17 (E/C.12/1999/5).

[924] A/65/282, paras. 81 and 82.

[925] A/65/282, paras. 86 ff.

[926] See for instance, Doctors Without Borders, "MSF Calls on Donors to Review Their Policy in DPRK", 30 September 1998. Available from http://www.doctorswithoutborders.org/press/release.cfm?id=460. See also L. Gordon Flake and Scott Snyder, *Paved with Good Intentions: The NGO Experience in North Korea* (Praeger Publishers, 2003), p. 111.

[927] John Feffer, "North Korea and the politics of famine, Part 2: Human rights violations", *Asia Times*, 23 September 2006. Available from http://www.atimes.com/atimes/Korea/HI23Dg01.html

[928] TLC033, ELC003.

[929] See in this regard sections IV.B, IV.C and IV.D.2.

[930] See above, section IV.D.1.

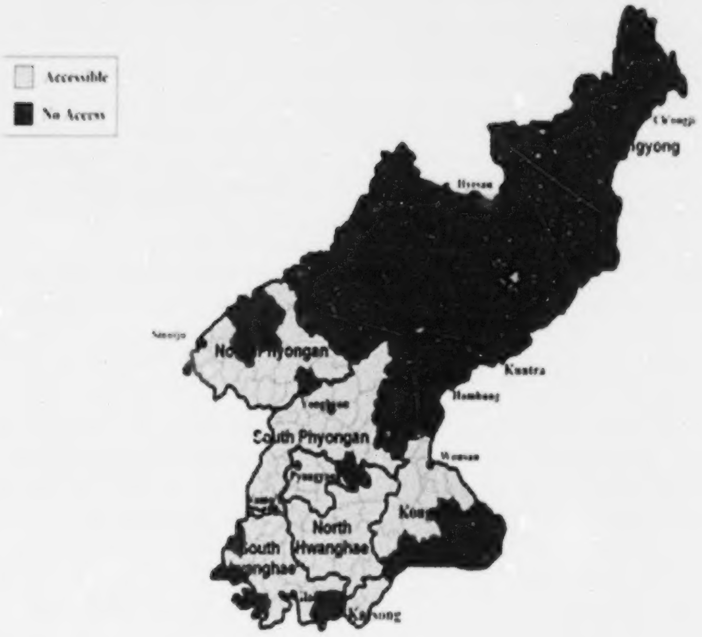

Figure 10. Accessible and restricted counties 1995-1996[931]

627. The political implications for the DPRK of accepting foreign assistance, especially from countries considered as "enemies" were frequently considered to outweigh the plight of the population.

- At the Washington Public Hearing, Andrew Natsios told the Commission about problems relating to the delivery of aid provided by the United States of America.

  "The big controversy was over taking down the American flag on the vessel delivering the aid to a DPRK port. In the first shipment that went in, WFP told me the story [that] the ship sat in the port for three days because the captain refused to take the American flag off the vessel. It had to do with images; no one had gotten any shipments in that port from the central government in two years. People were dying in the streets, and the notion that the United States was going to save all these people was very offensive to the political authorities."[932]

628. The restrictions imposed by the DPRK on humanitarian actors have contravened, and continue to contravene, the basic principles of humanitarian engagement. Between 1998 and 2000, a number of reputable humanitarian organizations, including Médecins sans Frontières (MSF), Oxfam, CARE and Médecins du Monde, stopped their operations in the DPRK, because they considered their engagement to be unsustainable under the conditions imposed by the DPRK authorities. In 2002, Fiona Terry, then research director of MSF, summarized the reasons why humanitarian organizations like MSF had stopped their operations in the DPRK:

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[931] Exhibit W-2. Provided by Marcus Noland, "Accessible & Restricted Counties 1995-1996", WFP Asia Regional Bureau (2005).

[932] Washington Public Hearing, 31 October 2013, morning (02:51:38).

> None of the characteristics of humanitarian space exists in North Korea today, rendering it impossible to know whether food aid entering the country is helping to alleviate the slow-motion famine or is sustaining the political project of the last Stalinist dictatorship on earth. It is hard to defend the "humanitarian" nature of aid to North Korea either in its intention, which for major government donors is to prevent the sudden collapse of the regime to avoid destabilizing the region, or in its methods.[933]

629. The lack of physical access to populations in need in the DPRK has prevented humanitarian actors from properly assessing the situation so as to carry out their operations most effectively.[934] Faced with the problem that aid apparently did not reach the most vulnerable populations, a number of humanitarian agencies adopted a "no access-no aid" policy, which led to some improvement regarding the access given to agencies to monitor aid distribution.

630. The number of counties the WFP could access has changed over time. The latest map produced by the WFP in March 2013 (see figure below) shows it can access 82 of about 200 counties.[935] The entire Chagang Province which has the highest level of acute malnutrition and stunting (alongside Ryanggang Province), is not covered by WFP operations.

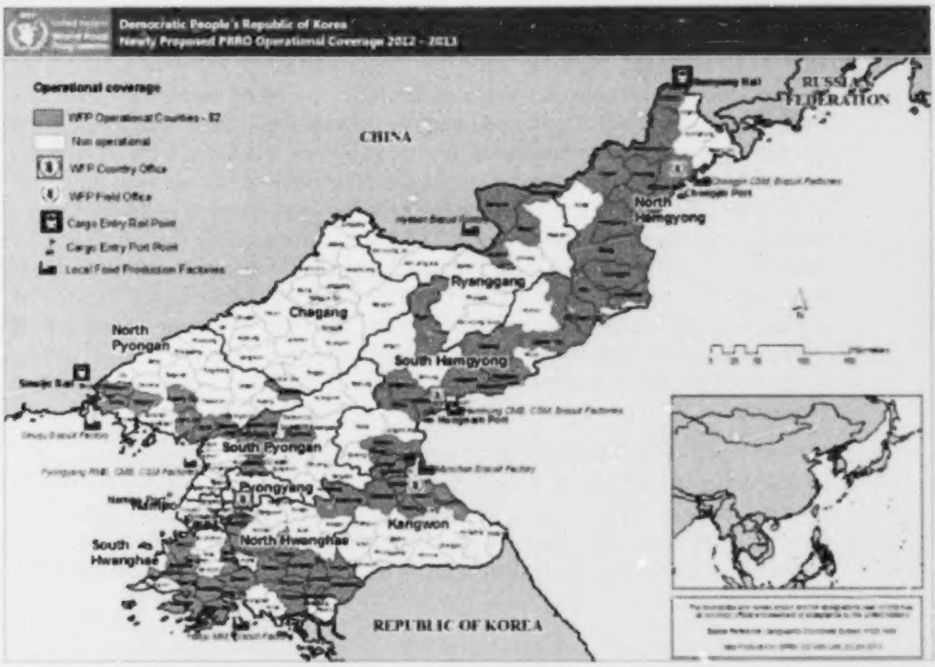
Democratic People's Republic of Korea
Newly Proposed PRRO Operational Coverage 2012 - 2013
Operational coverage
WFP Operational Counties - 82
Non operational
WFP Country Office
WFP Field Office
Cargo Entry Rail Point
Cargo Entry Port Point
Local Food Production Factories
CHINA
RUSSIAN FEDERATION
North Hamgyong
Ryanggang
Chagang
North Pyongan
South Hamgyong
South Pyongan
Pyongyang
Nampo
Kangwon
North Hwanghae
South Hwanghae
REPUBLIC OF KOREA

Figure 11. Operational coverage by the World Food Programme[936]

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[933] Fiona Therry, *Condemned to Repeat?: The Paradox of Humanitarian Action* (Cornell University Press, 2002), p. 243.

[934] Stephen Haggard and Marcus Noland, *Famine in North Korea*, p. 89. See also section IV.D.1.

[935] On its web site, WFP states that its operations currently target "2.4 million women and children in 87 of DPRK's 210 counties". Available from http://www.wfp.org/countries/korea-democratic-peoples-republic-dprk/overview.

[936] WFP, "Democratic People's Republic of Korea, Newly Proposed PRRO Operational Coverage 2012-2013". Available from

631. The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child have all called on the DPRK to provide vulnerable groups, including rural and economically disadvantaged women and children, access to food aid and other international assistance.[937] In the context of the DPRK, pregnant and lactating women, children, and elderly people are considered to be especially vulnerable.[938] Information received by the Commission, however, indicates that food aid and other humanitarian assistance failed to reach targeted groups in many cases. In particular the Commission received information from former DPRK citizens, former humanitarian staff deployed to the DPRK and other sources that aid often did not reach those children who are most in need of assistance, including street children.

632. In 2000, Action Against Hunger (AAH) decided to stop its programme to provide humanitarian aid to children in the DPRK, because the authorities denied them access to the most vulnerable children. It explained its decision as follows:

> The number of children present in the facilities [that received AAH aid] was less than the quoted official figures, even though all AAH visits were announced in advance. The malnutrition detected in these facilities was around 1 per cent, although the nutrition survey conducted by UNICEF, WFP and the European Union showed 16 per cent of malnutrition amongst children. Most of the malnutrition cases witnessed by our team were amongst children with no access to any facilities. Those who were especially hard hit were the "street children", many of whom were between 3 and 4 years old, and found wandering alone, while visibly very weak and fighting to collect food. Confronted with this situation and convinced that the aid channelled through government-run facilities did not reach the most vulnerable, Action Against Hunger negotiated with the authorities to set up soup kitchens, outside the official facilities, targeting the most high risk group of children. But the conditions to implement this programme have been refused by the North-Korean authorities. We are convinced that the international aid flowing into North-Korea is not reaching the people most in need. We were denied authorization to visit the poorest families, where we suspect that children are confined to their homes, cut off from any assistance and essentially condemned to death. This is extremely revolting as the lives of these children could be easily saved with access and appropriate assistance."[939]

> In September 1998, Médecins Sans Frontières discontinued its operations in the DPRK citing a "high level policy change to further restrict and limit effective humanitarian aid, which makes it impossible to deliver aid in a principled and accountable manner." MSF had sought to target particularly vulnerable groups such as homeless and orphaned children. Instead the DPRK authorities insisted that the

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http://reliefweb.int/sites/reliefweb.int/files/resources/Democratic%20Peoples%20Republic%20of%20Korea%20Newly%20Proposed%20PRRO%20Operational%20Coverage%202012%202013_0.pdf.

[937] CESCR Committee, Concluding Observations on DPRK, E/C.12/1/Add.95, para. 21; CRC Concluding Observations CRC/C/PRK/CO/4, para. 16; CEDAW Concluding Observations A/60/38, para. 60.

[938] See for instance WFP, "Emergency Food Assistance to Vulnerable Groups in the Democratic People's Republic of Korea". Available from http://one.wfp.org/operations/current_operations/project_docs/200266.pdf.

[939] Action Contre la Faim, "Action Against Hunger stops its activities in North Korea", 10 March 2000. Available from http://reliefweb.int/report/democratic-peoples-republic-korea/action-against-hunger-stops-its-activities-north-korea#sthash.Yp6AJhK8.dpuf.

most effective type of medical and nutritional assistance was for "MSF to pay deep attention to provide pharmaceutical raw materials."[940]

633. Testimony received by the Commission from humanitarian staff, who had worked in the DPRK at different points in time, indicated that there were strong doubts that the people and children presented to them were those most in need, even in the areas they were allowed to access. Some pointed out that these visits were "well staged performances".[941] Others stated that despite the large amounts of international aid given to the DPRK, the most vulnerable were not reached.[942]

634. The DPRK authorities have continually prohibited effective monitoring of humanitarian assistance by the international providers of assistance. For humanitarian organizations who decided to continue working in the DPRK, it was very difficult to understand the situation inside the country. In addition to the lack of physical access, international relief organizations, such as the WFP, were not allowed, to have any Korean speaking staff. Instead, local Korean interpreters were provided by the DPRK authorities. Apart from raising obvious questions about the independence and impartiality of such staff, this also affected the quality of humanitarian work, since the local staff provided did not have the specific technical abilities to manage an aid effort.[943] United Nations requests for permission to conduct a random nutritional survey of children in the DPRK were repeatedly denied.[944]

- At the Washington Public Hearing, Andrew Natsios, who served as the United States Agency for International Development (USAID) administrator from 2001 to 2006, described the work of USAID in the DPRK in the 1990s:

  "The North Koreans early in the famine did not let us measure any of the children ourselves; they insisted on doing it. They determined where the 'sentinel surveillance' sites would be, which means it is not really an accurate survey. It is better than nothing, but is not accurate because it can be easily politicized."[945]

635. Reportedly, local officials have been removed from their posts for being too cooperative with international agencies.[946] In 1998, MSF stated that the DPRK's priority

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[940] Doctors Without Borders, "MSF Calls on Donors to Review Their Policy in DPRK", 30 September 1998. Available from http://www.doctorswithoutborders.org/press/release.cfm?id=460

[941] EBG003.

[942] According to a nutritionist who visited a nursery and orphanage in Cheongjin, in North Hamgyeong Province, on 15 July 1999, aid did not reach the most vulnerable children. At the nursery, the nutritionist saw 20 severely malnourished children, 3 of whom were about to die. At the orphanage, she saw 11 severely malnourished children. The children were dirty and suffering from skin infections such as scabies, and appeared as if they had been left unattended by the staff. The children received goats milk mixed with water and water mixed with sugar, neither of which is adequate as a treatment for malnutrition. The nursery did not have any high-energy milk even though UNICEF had delivered two tons of high-energy milk to the nursery in Chongjin in May 1999. Jean-Fabrice Pietri, Action Contre la Faim, "The inadequacies of Food Aid In North Korea", Summary of Comments (Plenary Session II), IVth International Conference on North Korean Human Rights and Refugees, Prague, March 2003.

[943] Stephen Haggard and Marcus Noland, *Famine in North Korea*, p. 96.

[944] L. Gordon Flake and Scott Snyder, *Paved with Good Intentions. The NGO Experience in North Korea*, p. 115.

[945] Washington Public Hearing, 31 October 2013, morning (01:44:48).

[946] Humanitarian Practice Network, "North Korea: Conflict Management, Food Aid and Humanitarian Principles". Available from http://www.odihpn.org/general/north-korea-conflict-management-food-aid-and-humanitarian-principles.

was "more to preserve the self-sufficient ideology than to provide effective and accountable assistance to those who need it most."[947]

636. Some observers have claimed that the situation in terms of access and monitoring inside the DPRK has improved over the years for humanitarian organizations. Some humanitarian agencies have been able to progressively access additional counties. Furthermore, the use of Korean language speaking not selected by the DPRK is now allowed for certain organizations. Small amounts of progress have been made in the field of monitoring food aid. However, 20 years after humanitarian agencies began their work in the DPRK, humanitarian workers still face unacceptable constraints impeding their access to populations in dire need. According to United Nations Country Team in the Democratic People's Republic of Korea,

> [O]perational restrictions continue to undermine donor confidence and resource mobilization, which in turn undermines discussions on better operating conditions. Negotiating access in DPRK has been and remains a long and difficult process. The Government often places unacceptable constraints on access required for humanitarian agencies to undertake programme implementation, monitoring and evaluation of activities.[948]

6. Non-utilization of maximum available resources

637. Article 2 (1) of the ICESCR states that "each State Party to the present Covenant undertakes to *take steps, individually and through international assistance and cooperation*, especially economic and technical, to the *maximum of its available resources*, with a view to *achieving progressively the full realization* of the rights recognized in the present Covenant *by all appropriate means*, including particularly the adoption of legislative measures" (emphasis added).

638. The concept of "progressive realization" describes a central aspect of states' obligations in connection with economic, social and cultural rights under international human rights treaties. At its core is the obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of a state's available resources. The reference to "available resources" reflects a recognition that the realization of these rights can be hampered by a lack of resources and can be achieved only over a period of time. Equally, it means that a state's compliance with its obligation to take appropriate measures is assessed in light of the resources, financial and otherwise, available to it.[949] However, the concept of progressive realization must not be misinterpreted as discharging the state from any obligations until they have sufficient resources. On the contrary, the treaties impose an immediate obligation to take appropriate steps towards the full realization of economic, social and cultural rights. A lack of resources cannot justify inaction or indefinite postponement of measures to implement these rights. Irrespective of the resources available to it, a state should, as a matter of priority, seek to ensure that everyone has access to, at the very least, a minimum level of rights, and target programmes to protect the poor, the marginalized and the disadvantaged. A state cannot plead resource constraints to justify its failure to ensure minimum essential levels of socio-economic well-

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[947] Doctors Without Borders, "MSF Calls on Donors to Review Their Policy in DPRK", 30 September 1998.

[948] United Nations Country Team, "Overview of needs and assistance", 2012. Available from http://www.wfp.org/sites/default/files/DPRK per cent20Overview per cent20Of per cent20Needs per cent20And per cent20Assistance per cent202012.pdf.

[949] Office of the High Commissioner for Human Rights, "Frequently Asked Questions on Economic, Social and cultural Rights," Geneva, 2008, p. 13.

being, including freedom from hunger, unless it can demonstrate that it has used all the resources at its disposal to give priority to essential economic and social needs.[950]

639. Based on the body of testimony and submissions received, the Commission finds that the allocation of resources by the DPRK has grossly failed to prioritize the objective of freeing people from hunger and chronic malnutrition, in particular in times of mass starvation. The state has neither prioritized the purchase of the food necessary for the survival of many in the DPRK, nor investment in agriculture, infrastructure and other ways of improving the availability and accessibility of food in the country. FAO and WFP note that the continuous inability to achieve the official Government target of 573 grams of cereal equivalent per person per day in any given year points not only to issues of food availability, but also to broader supply chain constraints such as storage, transport and commodity tracking.[951]

640. Testimony and other information received by the Commission show that the DPRK continues to allocate disproportional amounts of resources on its military, on the personality cult of the Supreme Leader, related glorification events and the purchase of luxury goods for the elites.

(a) Prioritization of military expenditure

641. The DPRK maintains one of the world's largest standing armies, comprising around 1.2 million people. This represents the world's highest ratio of military personnel to the general population. Given the secretive nature of the state, figures displaying actual military spending figures are difficult to obtain. Official sources state that around 16 per cent of the total state budget is devoted to national defence.[952] Other sources estimate that it is around a quarter of the Gross National Product.[953]

642. Instead of shifting resources to address urgent needs during the course of the famine in the late 1990s, Kim Jong-il placed even more emphasis on the military in line with the "Military First" doctrine (S*ongun*).[954] An official broadcast from the Korean Central Broadcasting Station explained this policy:

> During that period, which was called the "Ardous March" in our history, Great Comrade Kim Jong-il firmly believed that the destiny of the people and the future of the revolution hinged on the barrel of a gun, and that we could break through the difficulties and lead the revolution to victory only by depending on the Army, ... if the barrel of a gun were weak, a country would be eventually swallowed by outside force, no matter how powerful its economic might be and no matter how advanced its science and technology may be.[955]

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[950] See CESCR, General Comment No. 12, para. 17, (E/C.12/1999/5), and CESCR, General Comment No. 3, annex III, para. 10 (E/1991/23).

[951] FAO/WFP, "Crop and Food Security Assessment Mission to the Democratic People's Republic of Korea", 28 November 2013.

[952] "Report on Implementation of 2009 Budget and 2010 Budget", *KCNA*, 9 April 2010. Available from http://kcna.co.jp/item/2010/201004/news09/20100409-10ee.html.

[953] The Center for Arms Control and Non-Proliferation, "U.S. Defense Spending vs. Global Defense Spending", 24 April 2013. Available from http://armscontrolcentre.org/issues/securityspending/articles/2012_topline_global_defense_spending/.

[954] See also section III.E.

[955] On 21 March 2003 an Editorial Bureau Special Article in the DPRK newspaper Rodong Sinmun, "Military-First Ideology Is an ever-Victorious, Invincible Banner for Our Era's Cause of Independence" was broadcast on Pyongyang Korean Central Broadcasting Station (KCBS). The

643. A 2003 editorial published in *Rodong Sinmun*, the newspaper of the Workers' Party of Korea, similarly notes:

> What takes the leading position in the correlation between the army and the economy is still the army.....If economic power is based on military power, military power is a guarantee for economic power and impetus for economic development. We cannot defend national industries nor ensure a peaceful environment for economy-building without strong military power. Once we lay the foundations for a powerful self-sustaining national defense industry, we will be able to rejuvenate all economic fields, to include light industry and agriculture and enhance the quality of the people's lives.[956]

644. Expert analysis presented to the Commission shows that a marginal redistribution of state military expenditure towards the purchase of food could have saved the population from starvation and malnutrition. According to economist Marcus Noland, based on the last FAO/WFP Crop assessment, the DPRK has an uncovered grain deficit of 40,000 metric tons. According to the International Monetary Fund, in September 2013, the price of rice was approximately USD 470 per metric ton and the price of corn was around USD 207 per ton.[957] Basing his analysis on United Nations data, Mr Noland estimates that the size of the DPRK economy was $12.4 billion in 2011.[958] He states that the reallocation of resources required to close the grain gap is therefore less than 0.02 per cent of national income. If the estimation that 25 per cent of national income is being used for the military is correct, then the grain shortfall could be addressed by cutting the military budget by less than 1 per cent.[959]

645. Marcus Noland further estimates that even at the height of mass starvation, the amount of resources needed to close the food gap was only in the order of USD 100 million to USD 200 million. This represented the value of about 5 to 20 per cent of revenue from exported goods and services or 1 to 2 per cent of contemporaneous national income. At the Washington Public Hearing, he stated,

- *"[W]hile the amount of grain needed to close the gap [during the 1990s famine] was much larger, the price of grain in the 1990s was much lower than it is now. So at the famine's peak, the resources needed to close that gap were only on the order of a hundred to two hundred million dollars depending on how you analysed data. Even during the famine period, the North Korean government had resources at its disposal if it had chosen to use them, to maintain imports and avoid that calamity."*[960]

646. Even a delay in purchasing military equipment and using foreign currency instead to buy food on the international markets may have saved a very large number of people. In 1994, when the food shortage was already known to the authorities, the DPRK reportedly

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translated text is available from http://nautilus.org/publications/books/dprkbb/military/dprk-briefing-book-dprk-military-first-doctrinal-declaration/.

[956] "Military- First Politics is a Precious Sword of Sure Victory for National Sovereignty", *Rodong Sinmun*, 2003. Translated text available from http://nautilus.org/publications/books/dprkbb/military/dprk-briefing-book-dprk-military-first-doctrinal-declaration/.

[957] Note that the IMF estimates the price of rice at USD 448 in November 2013 (Commodity Market Monthly, December 2013. Available from http://www.imf.org/external/np/res/commod/pdf/monthly/121313.pdf).

[958] Other figures at the disposal of the Commission suggest this figure to be higher and around 14.7 billion dollars.

[959] Submission to the Commission: Marcus Noland.

[960] Washington Public Hearing, 31 October 2013, morning (01:16:00).

bought a number of submarines.[961] In 1999, at the same time that it was cutting commercial grain imports to less than 200,000 metric tons, the government reportedly used its foreign currency for the purchase of 40 MiG-29 fighter jets from Belarus and 8 military helicopters from Kazakhstan.[962]

647. In 2005, the United Nations Secretary-General noted that the authorities of the Democratic People's Republic of Korea are under a responsibility to reduce military/defence expenditure and ensure equitable re-allocation of resources to respond effectively to the food crisis and other areas needing development.[963]

648. However, the Commission has received no indication that the DPRK has changed its approach of prioritzing the military over humanitarian concerns. Instead, the current Supreme Leader Kim Jong-un has insisted that "Military First" remains one of the guiding principles of the DPRK. In one of his first public speeches as the Supreme Leader, delivered on 15 April 2012, Kim Jong-un emphasized: "In order for us to eternally glorify the dignity of military-first Korea and successfully accomplish the cause of building a powerful socialist state, first, second, and third, we must strengthen the people's army in every way."[964]

649. In a report to the Supreme People's Assembly on the 2012 state budget, Minister of Finance Choe Kwang-jin mentioned that only "38.9 per cent of total expenditure was spent for enforcing popular policies and measures for social culture under socialism such as the universal free compulsory education system, free healthcare, social insurance and social security, recuperation and relaxation systems as well as those for development of literature and art and building of a sports power."[965] While Mr Choe's report focuses on increased expenditure in areas that could positively impact economic, social and cultural rights, it vaguely mentions that "some of the total state budgetary expenditure went to national defence."[966]

(b) Use of aid to reduce State spending on food

650. The DPRK has had an ambivalent attitude towards foreign aid. It first considered such aid as an admission of failure of the DPRK system and a point of entry for external meddling. Lee Jong-wha, the Chairperson of the DPRK Food Damage Rehabilitation Committee, described the famine claims as a "pure fiction". He said that the DPRK did not accept any food aid with political purposes because it degraded the country's pride and

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[961] See for instance, "North Korea Buying Old Russian Subs", *New York Times*, 20 January 1994. Available from http://www.nytimes.com/1994/01/20/world/north-korea-buying-old-russian-subs.html.

[962] Submission to the Commission: Stephen Haggard and Marcus Noland, *Hunger and Human Rights*, p. 16.

[963] A/60/306, para. 17.

[964] Speech delivered by Kim Jong-un on 15 April 2012 in Kim Il-sung square in Pyongyang. An unofficial English translation of the full text is available at: http://www.northkoreatech.org/2012/04/18/english-transcript-of-kim-jong-uns-speech/

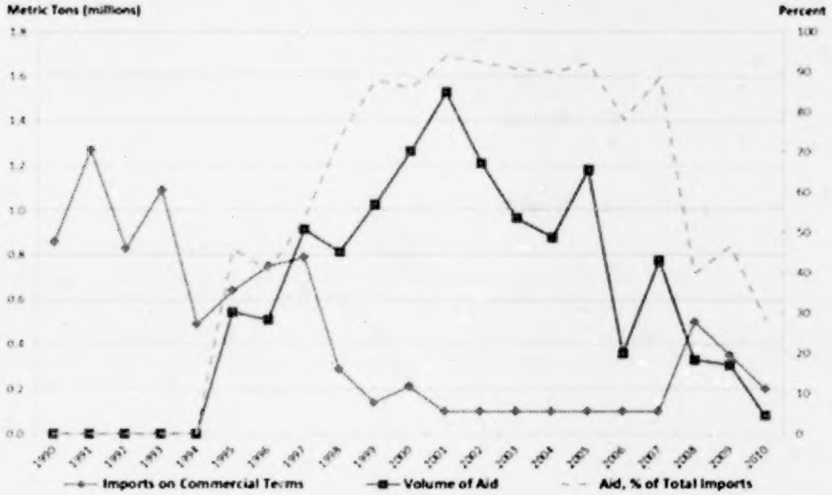
[965] "Review of Fulfilment of State Budget for Last Year and State Budget for This Year", *KCNA*, 1 April 2013. Mr Choe's report was given before the 7th Session of the 12th Supreme People's Assembly.

[966] Reportedly, the DPRK spent $1.34 billion for the launch of two rockets in 2012. "North Korea's rocket costs as much as a year's worth of food," *The Hankyoreh*, 8 December 2012. Available from http://www.hani.co.kr/arti/english_edition/e_northkorea/564382.html.

because it might lead to demands for economic and political changes.[967] In 1997 Kim Jong-il stated: "The imperialist's aid is a noose of plunder and subjugation aimed at robbing ten and even a hundred things for one thing that is given".[968] In 2000, *Rodong Sinmun* reported the official position of the DPRK on humanitarian aid: "The imperialists' aid is a tool of aggression ... a dangerous toxin which brings about poverty, famine and death, not prosperity."[969]

651. The DPRK has however used aid for its own political purposes. The DPRK has linked the degree of conditionality attached to aid operations and the number of international aid workers allowed into the country to the amount of money a humanitarian organization brings to the negotiating table.[970]

652. Most problematically, figures indicate that the DPRK has effectively used the inflow of aid as a balance of payments support, rather than as of means for relieving the most vulnerable part of the population from hunger and starvation. Instead of using aid as a supplement to its own commercial food imports, aid has apparently been used as a substitute for commercial imports. The graph below (figure 12), presented by Marcus Noland to the Commission during the Washington Public Hearing, shows that, as the volume of aid delivered to the DPRK increased, the volume of commercial food imports decreased.



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[967] Kristin Gustavson and Jinmin Lee Rudolf, "Political and Economic Human Rights Violations in North Korea" in Thomas H. Henrikson and Jongryn Mo, eds., *North Korea after Kim Il Sung : Continuity or Change?* (Hoover Institution Press, 1997), p. 142.

[968] Kim Jong-il, "On preserving the Juche Character and National Character of the Revolution and Construction" (19 June 1997). Available from http://www.korea-dpr.com/lib/111.pdf.

[969] "North Korea warns against outside aid", *The Associated Press*, 4 October 2000.

[970] According to the United Nations Country Team in the Democratic People's Republic of Korea, "the Government continues to link the granting of more favourable operating conditions to the amount of resources being brought into the country, which means that an agency with lower funding is allowed less access to populations." See "Overview of needs and assistance", 2012.

Figure 12. Volume of aid and imports on commercial terms[971]

653. The graph below (figure 13), also submitted to the Commission by Marcus Noland, shows the evolution of the DPRK's overall merchandise imports as compared to the evolution of food imports. Despite the chronic situation of malnutrition in the country, food imports experienced a downward trend between 1993 and 2010, as opposed to overall merchandise imports, which increased substantially.

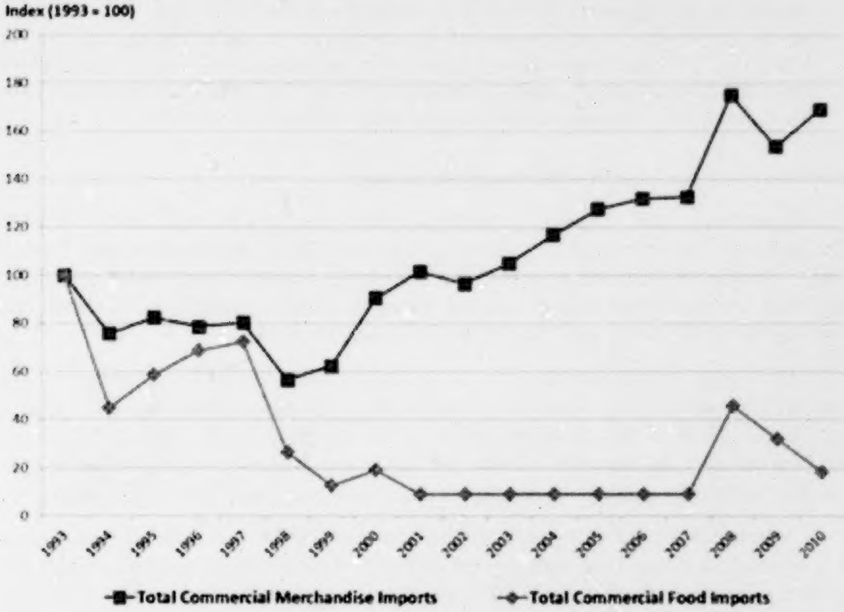

Figure 13. Democratic People's Republic of Korea: merchandise imports and food imports[972]

(c) Role of bilateral donors

654. Multilateral agencies have played a relatively minor role in the delivery of aid to the DPRK. An estimated 75 per cent of the total amount of food aid delivered since 1995 has been provided by China, the Republic of Korea, the United States of America, and Japan. The conditions under which such assistance have been provided have differed from country to country. In accordance with its Sunshine Policy, the ROK has distributed large amounts of unconditional aid. The USA has linked aid to progress on the nuclear issue. Between 1995 and 2009, the USA provided around USD 600 million in energy assistance to the DPRK. The aid was given between 1995 and 2003 and between 2007 and 2009 in exchange for the DPRK freezing its plutonium-based nuclear facilities.[973]

655. The way bilateral donors have handled their aid, has affected the work of the United Nations and other humanitarian agencies. Observers have noted that the unconditioned aid that China and the ROK delivered in the mid-2000s put the DPRK in a position to resist

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[971] Submission to the Commission: Marcus Noland based on FAO/WFP data available in the International Food Aid Information System (INTERFAIS) database.

[972] Submission to the Commission: Marcus Noland based on data provided by the ROK Ministry of Unification, FAO Special reports, and Mr Noland's own calculations.

[973] Congressional Research Service (CRS), "Foreign Assistance to North Korea", 11 June 2013.

some of the monitoring arrangements the WFP sought to put in place.[974] A report by the US Congressional Research Service (CRS) notes the following:

> In 2006, the WFP drastically scaled down its programme after the North Korean government imposed new restrictions, limiting the organization's size and ability to distribute and monitor its shipments. The WFP and Pyongyang then negotiated a new agreement that would feed 1.9 million people, less than a third of the 6.4 million people the WFP previously had targeted. The total population in the DPRK constitutes approximately 22 million. In the deal with the WFP, expatriate staff were cut by 75 per cent, to 10 people, all of whom were based in Pyongyang. Before 2006, the WFP had over 40 expatriate staff and six offices around the country conducting thousands of monitoring trips every year. The DPRK government did not allow any Korean speakers to serve on the WFP's in-country staff.[975]

(d) Parallel funds for the benefit of the Supreme Leader

656. The economic and financial problems faced by the DPRK in the 1990s, led the DPRK authorities to engage in a number of legal and illegal activities to earn foreign currency.[976] However, the currency earned was not used to purchase food, medicine or other goods, which the population urgently needed during the famine. Instead, it was channelled into parallel funds that are outside the regular government budget.[977]

657. These funds, which continue to exist, are tightly controlled by the Supreme Leader through offices institutionally connected to the Central Committee of the Workers' Party of Korea. They are kept at the personal disposal of the Supreme Leader and used to cover personal expenses of the Supreme Leader, his family and other elites surrounding him, as well as other politically sensitive expenditures that should not appear in the official budget.

658. Testimony from officials involved indicates that DPRK authorities engaged in a number of criminal activities to earn foreign currency. Revenue from criminal activity has been estimated to be as much as USD 500 million per year in 2008, amounting to a third of the DPRK's annual exports.[978] Information received suggest that a considerable portion of the salaries of workers, who are sent to work abroad by the DPRK, are placed in these types of funds.[979]

- One witness described his work at the North East Asia Bank in the Korean Foreign Insurance Company (KFIC) in 1997. He described in detail the existence of two parallel budgets in the DPRK, in what he called the "*people's economy*" and the "*royal economy*" which is run by the Supreme Leader. He was in charge of earning foreign currency by defrauding foreign insurances companies. This money was then reallocated to the *"royal economy"*. All the documents produced at the KFIC were destroyed to remove evidence that foreign currency earnings were mostly used to contribute to Kim Jong-il's personal "Revolution Funds". The witness personally destroyed many documents such as accounting records and withdrawal information.[980]

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[974] See "North Korea rejects UN food aid", *BBC News*, 23 September 2005. Available from http://news.bbc.co.uk/2/hi/asia-pacific/4273844.stm.

[975] CRS, "Foreign Assistance to North Korea".

[976] Stephen Haggard and Marcus Noland, *Famine in North Korea*, p. 245.

[977] TBG025, TJH015.

[978] CRS, "Report foı Congress, North Korean Crime-for-Profit Activities", 25 August 2008.

[979] See, for instance, "Overseas North Koreans Work like Kim Jong Il's Slaves", *Daily NK*, 29 April 2011.

[980] TLC032.

- One witness, who worked in the Keumsusan Palace in the 1990s, stated that the Accounting Department of the Workers' Party of Korea is in charge of producing, handling and providing what the Kim family wants, and that even their rice is produced separately. He stated that one of the trading companies, Rungra 888, was generating financial resources for this fund.[981]
- A former SSD agent, stated that every government agency was given an annual quota of foreign currency they had to earn.

  "The Government did not care where the money would come from, so agents were pushed to engage in all kinds of activities."

  He knew of SSD agents whotraded weapons and drugs with Chinese merchants. The agents obtained the weapons and drugs from state drug factories and depots in the DPRK. The witness has direct knowledge of the trafficking of the narcotic drug methamphetamine, which was formally authorized by central level authorities.[982]
- One witness said that a company bought ingredients used for the production of Korean herbal medicine and sold them to a producer of the medicine. In the 1990s, he regularly went to an ordinary prison camp (*kyohwaso*) to buy opium produced by the prison, which he then sold to a trading company. He was once shown the economic plan of the provincial department for managing medical ingredients. The plan specifically indicated that opium was produced for export purposes.[983]
- Another witness, a former manager of a state company, recalled that the central level of the Workers' Party provided the witness's company with instructions to grow and trade opium in order to generate foreign currency.[984]
- Another former official provided detailed information on the illegal activities of DPRK embassies around the world. They were engaged in activities such as the illegal sale of alcohol in Islamic countries or the internationally prohibited trafficking of ivory from African countries to China.[985]

(e) Advancement of the personality cult and glorification of the political system

659. A number of witness testimonies, including from former high level officials confirmed that a considerable part of state resources has been used to further the cult of personality and the glorification of the Kim regime.

- Built in 1973, the Keumsusan Assembly Hall was turned into an immense mausoleum for the late Kim Il-sung. The work started in 1995 when mass starvation was devastating the country. The Keumsusan palace is one example of the monumental buildings built at the height of the famine. It covers a surface of 34,910 square metres with a main square of 10,000 square metres where 200,000 people can gather. Reportedly, 700,000 granites sculptures were carved into 20 different shapes to decorate the building.[986] A former high ranking official testified:

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[981] TBG025. The name of this company is also mentioned in the report of the Panel of Experts to assist the Security Council Committee established pursuant to Resolution 1874 (2009), S/2013/337.

[982] TJH015.

[983] TJH005.

[984] TJH022.

[985] TBG022.

[986] "The First disclosure of the Kim Il Sung Tomb Castle which was built at the expense of 3 million lives," Daily NK, 3 July 2006. Available from

"Kim Il-sung died in 1994. There were months of mourning and the equivalent of USD 790 million was spent for building his tomb and other monuments. The DPRK economy that was already in poor conditions hit the bottom."[987]

- Another former official witness described his work at the Kim Il-sung Longevity Research Institute, an extremely well-resourced research facility established with the sole purpose of ensuring long lives and good health for Kim Il-sung and Kim Jong-il.[988]
- The Commission also received testimony about the immense expenditures devoted to the 13th World Festival of Youth and Students, which was held from 1 to 8 July 1989 in Pyongyang.[989] The World Festival was held in an apparent response to the Republic of Korea's hosting of the Olympic Games in 1988.
- One witness, who was a member of the KPA Escort Command, which is assigned to protect Kim Jong-il, stated, *"Kim Jong-il had airplanes, ships, trains, helicopters, car… He did not use the plane himself but he still wanted one."*[990]

660. Large amounts of state expenditure are also devoted to giant bronze statues and other projects designed to further the personality cult of Kim Il-sung and his successors and showcase their achievements. These projects are given absolute priority, which is also evidenced by the fact that they are often completed in a short period of time.[991] The DPRK Minister of Finance, Choe Kwang-jin, reported about the 2012 budget of the DPRK:

> Of the total state budgetary expenditure for the economic development and improvement of people's living standard, 44.8 per cent was used for funding the building of edifices to be presented to the 100th birth anniversary of President Kim Il-sung, the consolidation of the material and technological foundation of *Juche*-based, modern and self-supporting economy and the work for face-lifting the country.[992]

661. In 2013, Kim Jong-un ordered the KPA to construct a "world-class" ski resort that would rival the winter sports facilities that are being built in the ROK in preparation of the ROK's hosting of the 2018 Winter Olympic Games. When visiting the site in May 2013, Kim Jong-un reportedly "was greatly satisfied to learn that soldier-builders have constructed a skiing area on mountain ranges covering hundreds of thousands of square meters, including primary, intermediate and advanced courses with almost 110,000 meters in total length and between 40 and 120 metres in width."[993]

662. A number of similar prestige projects that fail to have any immediate positive impact on the situation of the general population have been pursued, including the construction of

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http://www.dailynk.com/english/read.php?cataId=nk00100&num=606 and the DPRK Uriminzokkiri website which shows pictures of this facility (www.uriminzokkiri.com).

[987] TBG022.

[988] TSH019. See also "Oriental medicine doctor gives S. Koreans tastes of N. Korea's 'royal court medicine'", *Yonhap News*, 22 August 2011.

[989] TAP011.

[990] TBG012.

[991] For instance, the extension of the Victorious Fatherland War Museum took 10 months. "Report on WPK Leadership over Construction of War Museum, 13 August 2013", KCNA. Available from http://www.youtube.com/watch?v=KDk3WiuRkw4&feature=player_embedded.

[992] "Review of Fulfilment of State Budget for Last Year and State Budget for This Year", *KCNA*, 1 April 2013. Available from http://www.kcna.co.jp/item/2013/201304/news01/20130401-20ee.html.

[993] "Kim Jong Un Visits Masik Pass Skiing Ground", *KCNA*, 26 May 2013.

the monumental Munsu Water Park in Pyongyang, the Rungna Dolphinarium and Pleasure Park in Pyongyang and a beach resort town in Wonsan.[994]

(f) Purchase of luxury goods

663. The DPRK continues allocating a significant amount of the state's resources for the purchase and importation of luxury goods, as confirmed by the reports of the United Nations Panel of Experts established pursuant to Security Council Resolution 1874 (2009), which inter alia monitors the implementation of the Security Council sanctions prohibiting the import of luxury goods. In one report, the Panel of Experts described the confiscation, by Italy, of luxury items such as high quality cognac and whiskey worth 12,000 euros (USD 17,290) and equipment for a 1,000-person cinema valued at Euro 130,000 (USD 187,310). The report further revealed that the DPRK has attempted to purchase and import a dozen Mercedes-Benz vehicles, high-end musical recording equipment, more than three dozen pianos and cosmetics.[995]

664. Luxury goods expenditure by the DPRK rose to USD 645.8 million (470 million euros) in 2012. Reportedly, this was a sharp increase from the average of USD 300 million a year under Kim Jong-il in October 2013.[996]

7. Violation of freedom from hunger, death by starvation and diseases related to starvation

665. Freedom from hunger lies at the conjunction of the right to adequate food (article 11 (2) of the ICESCR) and the right to life (article 6 of the ICCPR). States are obligated to provide directly food, including, if necessary, by appealing to external assistance, when individuals or parts of the population are unable, for reasons beyond their control, to enjoy access to food.

666. There has been much debate how many people died from starvation or related diseases in the DPRK in the 1990s. In 1999, Jon In-chan, an official with the DPRK's Flood Damage Rehabilitation Committee, reportedly released figures showing a 37 per cent increase in deaths between 1995 and 1998, which represented a famine-related death toll of 220,000 people.[997]

667. Other sources point to a much higher death toll. A former official stated that in 1995, 500,000 died of hunger, while in 1996 and 1997, one million died each year.[998] A source in the ROK reported that a survey, carried out in July 1998 by the Ministry of People's Security, recorded a decline of the population of 2.5 million to 3 million people between

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[994] "Songdowon Bathing Resort Crowded with Visitors", *KCNA*, 24 August 2013. Available from http://www.kcna.co.jp/item/2004/200408/news08/25.htm; "Munsu Water Park Completed", *KCNA*, 15 October 2013. Available from http://www.kcna.co.jp/item/2013/201310/news15/20131015-30ee.html; "Runga Dolphinarium Crowded with Visitors", *KCNA*, 21 August 2013. Available from http://www.kcna.co.jp/item/2013/201308/news21/20130821-15ee.html. See also "Kim splurges on vanity projects while his people go hungry", *DW*, 1 November 2013. Available from http://www.dw.de/kim-splurges-on-vanity-projects-while-his-people-go-hungry/a-17198244.

[995] 2010 Report S/2010/571; Report of the Panel of Experts established pursuant to resolution 1874 (2009). Available from http://www.un.org/sc/committees/1718/panelofexperts.shtml.

[996] "North Korea's Kim Jong-un splurges on luxury goods in bid to strengthen rule," *The Telegraph*, 14 October 2013. Available from www.telegraph.co.uk/news/worldnews/asia/northkorea/10377154/North-Koreas-Kim-Jong-un-splurges-on-luxury-goods-in-bid-to-strengthen-rule.html.

[997] "North Korea Admits Its Famine Killed Hundreds of Thousands", *Associated Press*, 10 May 1999.

[998] TBG020.

1995 and March 1998.[999] However, this figure may have included migration and may have been inflated to secure additional food aid. Mr Hwang Jong-yop, a high-level defector who fled the DPRK in 1998, indicated in various public statements that the death toll for the years 1995 to 1997 was 2.5 million:

> *"In November 1996, I was very concerned about the economy and asked a top official in charge of agricultural statistics and food how many people had starved to death....[The official] replied in 1995, about 500,000 people starved to death including 50,000 party cadres. In 1996, about one million people are estimated to have starved to death. ... In 1997, about 2 million people would starved to death if no international aid were provided."*[1000]

668. Various academics have applied statistical methodology to existing data to derive estimates on the death toll. In 2001, Daniel Goodkind and Loraine West concluded that excess deaths due to the famine most likely numbered between 600,000 and one million in the period between 1995 and 2000.[1001] In 2011, Mr Goodkind and Ms West revised their earlier estimates of excess deaths downward to 490,000.[1002] The research group of the Johns Hopkins School of Public Health estimated 2.1 million deaths for the period of 1995 to 1998.[1003] Stephen Haggard and Marcus Noland estimate that there were between 600,000 and 1 million deaths, or approximately 3 to 5 per cent of the pre-crisis population.[1004]

669. The Commission is not in a position to provide its own estimate on the number of deaths related to the "Great Famine" or Arduous March of the 1990s. By all accounts, however, at the very least hundreds of thousands of innocent human beings perished due to massive breaches of international human rights law. Moreover, the suffering is not limited to those who died, but extends to the millions who survived. The hunger and malnutrition they experienced has resulted in long-lasting physical and psychological harm.

670. Despite the large amount of international assistance provided in the last 20 years, the figures of malnutrition and stunting in the DPRK continue to be very high and unevenly distributed. The Commission is particularly concerned about the ongoing situation of children in the DPRK. Article 6 of CRC, to which the DPRK is a party, recognizes every child's inherent right to life and requests States Parties to "ensure to the maximum extent possible the survival and development of the child."

671. The close connection between maternal under-nutrition, low birth-weight, childhood stunting and underweight has been known for a long time and has major intergenerational implications.[1005] It is exceptionally important to break this intergenerational cycle, because it is "not only a fundamental ethical issue but also a priority for any Government concerned

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[999] "North Korea 'loses 3 million to famine'", *BBC News*, 17 February 1999. Available from http://news.bbc.co.uk/2/hi/asia-pacific/281132.stm.

[1000] Hwang Jang-yop, *North Korea: Truth or Lies*, (Intitute for Reunification Policy Studies, 1998), p. 15. SUB0064.

[1001] Daniel Goodkind and Loraine West, "The North Korean Famine and Its Demographic Impact", *Population and Development Review*, vol. 27, No. 2 (June 2001). Available from http://www.jstor.org/stable/2695207.

[1002] Daniel Goodkind, Loraine West and Peter Johnson, "A Reassessment of Mortality in North Korea, 1993-2008", 28 March 2011. Available from http://paa2011.princeton.edu/papers/111030.

[1003] W Courtland Robinson and others ,"Rising Mortality in North Korean Households Reported by Migrants in China", *Lancet*, vol. 354, No. 9175 (July 1999).

[1004] Stephen Haggard and Marcus Noland, *Famine in North Korea*, pp. 72-76.

[1005] See for instance "Ending Malnutrition by 2020: an Agenda for Change in the Millennium", Final Report to the Administrative Committee on Coordination of the United Nations Standing Committee on Nutrition (ACC/SCN) by the Commission on the Nutrition Challenges of the 21st Century, February 2000.

for the future intellectual and economic capacity of its people."[1006] In the Commission's view, the generational impact of starvation must also be considered from a human rights and accountability perspective.

672. Starvation is the most acute violation of the right to food. When considering starvation, four broad situations can be envisaged:

- Starvation as a result of factors outside authorities control (such as natural disasters);
- Starvation as a result of lack of capacity, incompetence, corruption and other factors within the state;
- Inaction or indifference of state toward starvation despite knowledge of the situation; and
- Starvation resulting deliberate actions.

673. These four categories can point to different level of state responsibility. They are highly relevant for determining individual responsibility. The Commission will consider the responsibility of officials for crimes against humanity committed on the basis of decisions that were known to aggravate mass starvation and related deaths in section V of this report.[1007]

674. The occurrence of natural disasters and various actions undertaken by hostile states, including sanctions, has been repeatedly presented by the DPRK as the official explanation for malnutrition and starvation in the country. While having duly considered the impact of factors beyond state control on the food situation, the Commission finds that decisions, actions and omissions by the DPRK and its leadership have generated and aggravated this situation. They have caused at least hundreds of thousands of human beings to perish. Those who survived, suffered permanent physical and psychological injury including intergenerational harm. Actions and omissions that have created the faminogenic conditions in the country include:

- prioritizing ideology, politics and the interests of elites over the food security of the broader population;
- using food as a means of controlling the population;
- concealing information and data that could have helped to save lives;
- violating the population's rights to freedom of information and freedom of movement, which directly impact the ability of people to access food;
- denying full access to and monitoring by international humanitarian organizations even in times when the country was facing mass starvation;
- Placing financial conditions on the type and extent of humanitarian organizations engagement; and
- distributing food and diverting international assistance in a discriminatory manner, based on *songbun* and according to perceived loyalty and usefulness to the DPRK.

675. The Commission is concerned that, although a number of factors have evolved since the 1990s, other elements aggravating or creating starvation, which are within state control, remain in place. These elements may cause the recurrence of famine and mass starvation in

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[1006] See E/CN.4/Sub.2/1999/12, para. 22.

[1007] See section V.F.

the country. DPRK continues to deny full and unhindered access to humanitarian and relief organizations. It cannot ignore that this lack of genuine collaboration can result in increasing the number of deaths by starvation, stunting and other food-related concerns in the country. The state continues to be secretive on matters that affect the lives and health of the population. By blocking access and preventing proper monitoring, the DPRK authorities impede the development of effective assistance programmes that can relieve people from hunger, in particular those most vulnerable.

676. Reports from the DPRK continue to point to high levels of malnutrition, stunting and death due to starvation. The specific regional and social patterns emerging from these reports are grounded in discrimination on the basis of state-assigned social class (*songbun*). The DPRK also still fails to use the maximum available resources to address the problem of hunger in the country. Discrimination, ideological considerations, restrictions on freedom of movement, freedom of opinion and freedom of association and lack of popular participation to decision-making are precluding sustainable improvements in the realization of the right to food. Given these elements, the mere availability of food in the markets may not be enough to stop starvation.

677. In 1983, before mass starvation in the DPRK commenced, Dr Amartya Sen, Nobel laureate and expert in famines and their causes, stated: "Starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there not being not enough food to eat."[1008]

678. Focusing on starvation uniquely as a question of availability of food misses the question of why the situation occurred in the first place and whether the situation may reappear. Along the same lines, others have rightfully argued that,

> [F]amine should be seen as a protracted politico-social-economic process of oppression comprising three stages: dearth, famishment and mortality. The culmination of the process comes well before the final stage of disease and death. If the process is halted before people die, it is nonetheless still a famine. Second, famine cannot be defined solely by reference to the victims. The process is one in which 'benefits accrue to one section of the community while losses flow to the other.[1009]

679. Experts in the public hearings and various testimonies received by the Commission have made the case that these insights also apply to the DPRK.

- At the Tokyo Public Hearing, Mr Ishimaru Jiro stated:

  "*From my experience investigating North Korea, what I understand is that in North Korea the case is not absolute shortage of food supply. The famine in North Korea has to do with the access to food*".[1010]

680. Access to food is about a relationship of power between those controlling food and those lacking such control. Human rights lie at the heart of this relation. As long as civil, economic, political and social rights are not progressing in the DPRK, the population is at risk of hunger and starvation. In a highly centralized decision-making context, decisions related to food, including distribution of food, purchasing food from abroad, state budget

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[1008] Amartya Sen, *Poverty and Famines: An Essay on Entitlements and Deprivation* (Oxford, Clarendon Press, 1983).

[1009] This argument was originally developed by Amrita Rangasami "Failure of exchange entitlements theory of famine: a response", *Economic and Political Weekly*, vol. 20, No. 41 (1985), p. 1748 and has also been cited with approval by Jenny Edkins, "Starvations and the Limitations of Famine Theorising", *Institute of Development Studies (IDS) Bulletin*, vol. 33, No. 2, (2002), p. 14.

[1010] Tokyo Public Hearing, 29 August 2013, afternoon (01:35:17).

allocation, and interaction with international governments and non-governmental organizations, are ultimately determined by a small group of officials. These officials must be accountable to their people for past, present and future behaviour.

8. Violation of the right to food and prisoners

681. The Commission finds that the DPRK has been responsible for the deliberate starvation of people detained for interrogation purposes as well as those imprisoned in political prison camps and the ordinary prison system.[1011] Starvation among the inmates is a general feature of detention in the DPRK. Deliberate deprivation of food has been systematically used as a means of control and punishment in detention facilities. Cuts to rations were part of guards training and described in prison documents. Prison camps authorities were fully aware of the results of this deprivation as regular medical checks were performed on inmates. The food deprivation in detention facilities was described in all periods independently of the overall food situation.[1012]

9. Principal findings of the commission

682. The rights to food, freedom from hunger, and to life in the context of the Democratic People's Republic of Korea cannot be reduced to a narrow discussion of food shortages and access to a commodity. The state has used food as a means of control over the population. It has prioritized those whom the authorities believe to be crucial in maintaining the regime over those deemed to be expendable.

683. Confiscation and dispossession of food from those in need, and the provision of food to other groups, follows this logic. The state has practised discrimination with regard to access to and distribution of food based on the *Songbun* system. In addition, it privileges certain parts of the country, such as Pyongyang, over others. The state has also failed to take into account the needs of the most vulnerable. The Commission is particularly concerned about ongoing chronic malnutrition in children, and its long-term effects.

684. The DPRK was aware of the deteriorating food situation well before the first appeal for international aid in 1995. State-controlled production and distribution of food was not able to provide the population with adequate food from, at best, the late 1980s. The lack of transparency, accountability, and democratic institutions as well as restrictions on freedoms of expression, information and association, prevented the adoption of optimal economic solutions over those in accordance with directives of the Workers' Party of Korea. The DPRK has evaded structural reforms to the economy and agriculture for fear of losing its control over the population.

685. During the period of famine, ideological indoctrination was used in order to maintain the political system, at the cost of seriously aggravating hunger and starvation. Official campaigns to collect food for soldiers, to eat two meals instead of three from an already deprived recipient population and the rhetoric of the Arduous March were used to compel the population to endure the hardships for a national purpose. The concealment of information prevented the population from finding alternatives to the collapsing Public Distribution System. It also delayed international assistance that, provided earlier, could have saved many lives.

686. Despite the state's inability to provide its people with adequate food, it maintained laws and controls effectively criminalizing people's use of key-coping mechanisms,

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[1011] See sections IV.E.3 and IV.E.4 for a more detailed description of conditions in political and ordinary prisons

[1012] See section IV.E.

including moving within or outside the country in search of food and trading or working in informal markets.

687. Even during the worst period of mass starvation, the DPRK impeded the delivery of food aid by imposing conditions that were not based on humanitarian considerations. International humanitarian agencies were subject to restrictions contravening humanitarian principles. Aid organizations were prevented from properly assessing humanitarian needs and monitoring the distribution of aid. The DPRK denied humanitarian access to some of the most affected regions and groups including homeless children.

688. The DPRK has consistently failed in its obligation to use the maximum of its available resources to feed those who are hungry. Even with available financial resources, the DPRK has not purchased the necessary food to compensate for its inadequate production even when starvation prevailed. Military spending has been prioritized even during periods of starvation. However, the DPRK still failed to feed ordinary soldiers. Large amounts of state resources, including funds directly controlled by the Supreme leader, have been spent on luxury goods and the advancement of the personality cult while ordinary citizens starve.

689. The DPRK systematically uses deliberate starvation as a means of control and punishment in detention facilities. Cuts in rations have been part of guards training and described in prison documents. This has resulted in the deaths of many political and ordinary citizens.

690. The Commission finds systematic, widespread and grave violations of the right to food in the Democratic People's Republic of Korea. While acknowledging the impact of factors beyond state control on the food situation, the Commission finds that decisions, actions and omissions by the state and its leadership have caused the death of at the very least hundreds of thousands of human beings and inflicted permanent physical and psychological injury including intergenerational harm, on those who survived.

691. The Commission finds what occurred during the 1990s a most serious indictment of the DPRK and its officials. In the highly centralized system of the Democratic People's Republic of Korea, decisions related to food, including production and distribution, state budget allocation, decisions related to humanitarian assistance and the use of international aid, are ultimately determined by a small group of officials, who are effectively not accountable to those affected by their decisions. In this context, the Commission considers crimes against humanity of starvation in section V of the present report.

692. While conditions have changed since the 1990s, hunger and malnutrition continue to be widespread. Deaths from starvation continue to be reported. The Commission is concerned that structural issues, including laws and policies that violate the right to adequate food and freedom from hunger remain in place which could lead to the recurrence of mass starvation.

E. Arbitrary detention, torture, executions, enforced disappearance and political prison camps

693. The Commission bases its findings on arbitrary detention, torture, executions and prison camps mainly on the human rights obligations of the DPRK under article 6 (the right to life), article 7 (freedom from torture and cruel, inhuman or degrading treatment), article 9 (right to liberty and security of the person), article 10 (humane treatment of detainees), and article 14 (right to a fair trial) of the International Covenant on Civil and Political Rights (ICCPR). It also took into account the rights of children under article 6 (right to life), article

37 (freedom from torture and unlawful deprivation of liberty) and article 40 (treatment in detention) of the Convention on the Rights of the Child (CRC).

1. Arbitrary arrests and enforced disappearances

694. The laws of the DPRK provide the security agencies with broad powers of search, seizure and arrest during the investigation and pre-trial examination phases. Contrary to the DPRK's international obligation under article 9 (3) of the ICCPR, which requires that anyone arrested or detained on a criminal charge must be brought promptly before a judge or other judicial officer, oversight of the detention process is exercised only by the Office of the Prosecutor; not the courts. According to the Code of Criminal Procedure, the prosecutor must issue an arrest warrant, which must be presented to the suspect. Confirmation of the continued detention must be requested from the prosecutor within 48 hours of the arrest.[1013]

695. In practice, even these requirements provided by DPRK law are not always complied with. A 2012 survey on detention and trial practices in the DPRK, conducted by the Korean Bar Association in the Republic of Korea, found that only 18.1 per cent of respondents were presented with an arrest warrant or other document justifying their detention at the time of their arrest. The majority never received any information concerning the reason of their arrest.[1014] Suspects are often not even informed orally about the reasons for their arrests.

- Mr Kim Gwang-il was arrested without a warrant when authorities found out that he had gone back and forth into China to sell rare pine mushrooms. Mr Kim was not told why he had been arrested, nor was an arrest warrant presented to him.[1015] Many other witnesses confidentially interviewed by the Commission had shared the same experience.

696. While a lack of due process is apparent in the entire criminal justice system of the DPRK, it becomes most apparent whenever cases are considered to have a political dimension, especially those handled by the State Security Department (SSD) and the Korean People's Army (KPA) Military Security Command.[1016] As a rule of thumb, it can be said that the more political a case is considered to be, the less a suspect can hope to enjoy even the limited due process rights granted by the Constitution and Code of Criminal Procedure. Suspects of political wrongs are frequently arrested at night, in the street or at their workplace and brought to a detention facility. Often they can only guess from the line of interrogation as to why they were arrested.

- Mr Ahn Myong-chol testified that most inmates to whom he spoke during his long years of working as a political prison camp guard had no idea why they had been arrested: *"They all told me that one night when they were in bed, suddenly [State Security Department agents] came to their house and they got arrested... I was taught that the inmates were bad people. But these people, I found out, had no idea why they were there."* [1017]

[1013] DPRK Code of Criminal Procedure, articles 160, 180 and 182. See also statements by the delegation of the DPRK before the Human Rights Committee, as reflected in CCPR/C/SR.1946 (2001), para. 20.

[1014] KBA, 2012 *White Paper on Human Rights in North Korea*, p. 202.

[1015] Seoul Public Hearing, 24 August 2013, morning.

[1016] According to article 124 of the DPRK Code of Criminal Procedure, the SSD is designated to investigate the political crimes that the DPRK Criminal Code refers to as "anti-state and anti-people crimes". The KPA Military Security Command is in principle only responsible for political crimes involving military personnel, but in practices also takes on other cases. See also section III.E.

[1017] Seoul Public Hearing, 21 August 2013, afternoon (00:40:59).

- A former SSD agent confirmed that all they needed to arrest a person suspected of political wrongs was a written authorization from their director. Suspects were only informed orally about the reasons for their arrest.[1018]
- In 2008, SSD agents arrested the 20-year old son of a witness in Hoeryoung County, North Hamgyong Province.[1019] The victim had converted to Christianity and had been in contact with a Korean-American pastor in China. The men did not present a warrant and threatened the victim's mother that she should not ask any questions about who they were and where they were taking her son. Two years later, the family heard from a personal contact in the SSD that the son had been interrogated for six months by the SSD in Hoeryoung and was eventually sent, without trial, to Political Prison Camp No. 16. The witness agonizes that he knows that is son is "*as good as dead*". But he does not wish to lose hope of ever seeing him alive again.

697. According to article 183 of the DPRK Code of Criminal Procedure a suspect's family must be notified within 48 hours of the reasons for the arrest and the place of the suspect's detention. In practice, this requirement is often not respected. According to the survey of the Korean Bar Association mentioned above, only 49.4 per cent of respondents had their family notified of their detention.[1020]

698. Suspects of political crimes are regularly held incommunicado. In the eyes of friends, co-workers and neighbours, the person simply disappears and may never be heard from again. Even close family members are not notified about the reasons for the arrest or the whereabouts of the victim, although family members can at times secure such information through informal channels using bribes or personal contacts. Politically motivated arrests in the DPRK therefore regularly amount to enforced disappearances in that the initial arrest is followed by refusal to disclose the fate or whereabouts of the victim, who is placed outside the protection of the law.[1021]

699. The Commission finds that the refusal to disclose information about the fate of persons arrested for suspected political wrongs appears to be a deliberate feature of the system. It puts the population on notice that anyone who does not demonstrate absolute obedience can disappear at any time for reasons determined solely by, and known only to, the authorities.

2. Interrogation using torture and starvation

700. The Ministry of People's Security (MPS) operates a network of police stations and interrogation detention centres (*kuryujang*) at the hamlet, city, county, provincial and national level. When investigations take longer than usual, suspects may sometimes also be

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[1018] TLC028.

[1019] TJH010.

[1020] See KBA, 2012 *White Paper on Human Rights in North Korea* (2013), p. 203.

[1021] According to the preamble of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, adopted by General Assembly 47/133, enforced disappearances occur where "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law." Almost the same definition is contained in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, which the DPRK has not yet signed.

detained in holding centres (*jipkyulso*), especially if they are repatriated from China.[1022] Suspects of political wrongs or crimes who are arrested by the State Security Department (SSD) are initially detained in interrogation detention centres which exist at the county, provincial and national level. In addition, the SSD apparently maintains a number of secret interrogation detention facilities. These are often euphemistically described as "guest houses".

701. In a positive legal development, the 2005 reform of the DPRK Code of Criminal Procedure introduced a time limit of two months during which the interrogation and related pre-trial detention must be concluded. With the approval of the Office of the Prosecutor, this period can be extended, in exceptional cases, to four months. For ordinary crimes handled by the MPS, these time periods are usually respected.

702. However, the situation changes as soon as a case has a political dimension. Suspects of major political wrongs may find themselves in a detention interrogation centre anywhere from a few days to six months or more, depending on when the investigating agency considers that they have confessed to the entirety of their crimes and denounced all co-perpetrators. They are often also interrogated successively at the county-level SSD interrogation detention centre, the provincial SSD interrogation centre and, in exceptional cases, also the national headquarters of the SSD in Pyongyang.

703. Even suspects of minor political wrongs often end up spending months in preliminary detention before their final punishment is determined, because they are often moved between security agencies. In many cases, a suspect will be interrogated at length by the State Security Department or the KPA Military Security Command. If the suspect is found to have engaged only in minor wrongs, he or she is handed over to the MPS, where the interrogation process is recommenced.

(a) Systematic and widespread use of torture

704. During the interrogation phase, suspects are systematically degraded, intimidated and tortured, in an effort to subdue them and to extract a full confession. The physical set-up of the interrogation detention centre is often already designed to degrade and intimidate.

- After his forced repatriation from China, Mr Kim Song-ju was first brought to the SSD interrogation centre in Musan (North Hamgyong Province), where he was kept in an underground prison that appeared to him like a "*cave*". Such underground cells are a common feature of SSD interrogation centres.
- Subsequently, Mr Kim was transferred for further interrogation to the MPS interrogation detention centre in Musan. Mr Kim explained that he had to crawl on his hands and knees into the cell he shared with 40 other prisoners, because the entrance door was only about 80 cm high. The guards told him that "*when you get to this prison you are not human, you are just like animals, and as soon as you get to this prison, you have to crawl just like animals.*"[1023]
- Mr Jeong Kwang-il testified that he and other suspects of political crimes were kept in an underground facility run by the SSD in Hoeryong (North Hamgyong Province).[1024]

[1022] The treatment of suspects in jipkyulso holding centres is also covered in section IV.C.2.

[1023] London Public Hearing, 23 October 2013, session 1 (00:31:25).

[1024] Seoul Public Hearing, 21 August 2013, morning.

- Another witness, who was arbitrarily detained, described how the cell doors in the MPS detention centre in Chongjin were also constructed so that inmates could only crawl in and out.[1025]

705. Article 167 of the DPRK Code of Criminal Procedure prohibits obtaining the suspect's confession of guilt through forcible means. Article 229 of the Code of Criminal Procedure further specifies that, in the process of interrogation, witnesses and suspects must be protected from the use of force or intimidation.

706. Former SSD and MPS officials confidentially interviewed by the Commission indicated that the general instructions they received from their superiors did not require them to torture suspects. On occasion, general instructions not to use torture have apparently been issued by the Supreme Leader and other central government institutions (indicating awareness of the use of torture at the highest levels). However, in certain high-profile cases, orders were given by the Supreme Leader to mercilessly investigate certain individuals.[1026] Former DPRK officials also indicated that it is understood across the chain of command that torture is used, especially in politically sensitive cases, to force suspects to confess and name their co-perpetrators. While beating the suspect into a confession was the most common method, methods of more sophisticated cruelty were also employed.

707. Torture is an established feature of the interrogation process. The same means and methods of torture have been employed in different provinces and at different times. Officials often regard it as entirely normal to beat suspects until they confess. Some interrogation facilities have been specially outfitted to conduct more sophisticated methods of torture. In some cases, higher-ranking officials even instructed junior officials on efficient torture techniques. This is indicated by the fact that.

- A former SSD official described how a special torture chamber existed at the SSD interrogation detention facility in the province where the witness was deployed.[1027] The torture chamber was equipped with a water tank, in which suspects could be immersed until the suspect would fear drowning. The room also had wall shackles that were specially arranged to hang people upside down. Various other torture instruments were also provided, including long needles that would be driven underneath the suspect's fingernails and a pot with a water/hot chili pepper concoction that would be poured into the victim's nose. As a result of such severe torture, suspects would often admit to crimes they did not commit.

- A woman who was tortured by the SSD in a different province on suspicion of practising the Christian religion, described how a water tank similar to that described by the foregoing SSD official was used to torture her. She indicated that she was fully immersed in cold water for hours. Only when she stood on her tip-toes would her nose be barely above the water level. She could hardly breathe. She was gripped by panic, fearing that she might drown.[1028]

- A former MPS official revealed that the pre-trial investigation bureau in the headquarters of the Ministry of People's Security in Pyongyang made use of a small metal cage. Victims would be crammed into the cage for several hours so that the circulation of blood to extremities becomes interrupted and other parts of the body swell up. The victim turns into a rusty brown colour. After removal from the cage, the victim is abruptly "unfolded" causing further excruciating pain.

[1025] TBG005.

[1026] Former officials TJH015, TAP024.

[1027] TJH015.

[1028] TLC01.

> The witness also recalled receiving formal training on torture techniques from a senior investigator holding the rank of Lieutenant-Colonel. That senior official taught MPS officials how to cut off a suspect's blood circulation using straps, while simultaneously placing the suspect in physical stress positions in order to inflict the maximum level of pain.[1029]

708. In principle, article 253 of the DPRK Criminal Code criminalizes torture and other illegal means of interrogation. The DPRK has also stated that victims of torture and coercive means of interrogation are duly compensated.[1030] Victims can report cases of torture to the Prosecutor and special complaint mechanisms set up at the level of the Workers' Party of Korea, the Ministry of Justice and the National Inspection Committee.[1031]

709. However, in practice there is an understanding that perpetrators will not be held accountable. The Commission only received information about one case, in which a perpetrator of torture was held accountable.[1032] None of the information gathered by the Commission notes any cases, where victims of torture were provided with adequate, effective and prompt reparation as would be required under international law.[1033]

(b) Torture and inhuman treatment by the State Security Department

710. The treatment of suspects is particularly brutal and inhumane in the interrogation detention centres of the SSD, the primary agency tasked with suppressing "anti-state and anti-people crimes". Suspects held by the SSD are also typically held incommunicado, a condition that increases their vulnerability.

711. Inhumane conditions of detention exert additional pressure on detainees to confess quickly to secure their survival. During the interrogation phase, suspects receive rations designed to cause hunger and starvation.

712. In some interrogation detention centres, inmates also been subjected to forced labour in farming and construction. This violates international standards which prohibit the imposition of forced labour on persons not duly convicted.[1034]

713. Inmates, who are not undergoing interrogations or who are not at work, are forced to sit or kneel the entire day in a fixed posture in often severely overcrowded cells. They are not allowed to speak, move, or look around without permission. Failure to obey these rules is punished with beatings, food ration cuts or forced physical exercise. Punishment is often also imposed collectively on all cellmates.

[1029] TBG023.

[1030] Human Rights Council, National Report for the Universal Periodic Review submitted by the Democratic People's Republic of Korea, A/HRC/WG.6/6/PRK/1 (2009), para. 36.

[1031] Relevant testimony was provided by TAP011, a former official. See also State Report of the Democratic People's Republic of Korea to the Human Rights Committee, CCPR/C/PRK/2000/2, para. 47.

[1032] See Database Center for North Korean Human Rights (NKDB), *Political Prison Camps in North Korea Today*, 2nd ed. (Seoul, NKDB, 2012), p. 485 (referring to the conviction and sentence of an SSD officer to 10 years of imprisonment for torturing and killing a political prisoner)..

[1033] On the obligation to provide adequate effective and prompt reparation for torture and other gross human rights violations, see Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147, paras 15 ff.. See also Human Rights Committee, General Comment No. 20, article 7, HRI/GEN/1/Rev.1 at 30 (1994), para. 15.

[1034] See the legal standards reflected in section IV.E.4.a) (iii).

714. In accordance with international standards, men and women are generally separated. However, children of all ages are often detained together with adults, especially in cases of interrogation following forced repatriation from China. Young children are generally allowed to stay with their mothers. Children are kept under the same inhumane conditions as adults, although they are usually exempted from the most strenuous types of forced labour.

715. The detainees endure squalid hygienic conditions that facilitate the transmission of diseases. Medical care is provided only to those who are extremely sick or not at all. A considerable number of prisoners die from starvation or disease.

- Mr Jeong Kwang-il was detained in an underground interrogation facility operated by the SSD in Hoeryoung (North Hamgyong Province). He was held there on suspicion of being a spy of the Republic of Korea because Mr Jeong had engaged in trading with ROK citizens. During the 10 months he spent in detention, Mr Jeong was given so little food that his weight dropped from 75 kilograms to 36 kilograms.

  In order to make him confess, Mr Jeong was beaten with clubs, while hanging upside down. Like numerous other witnesses interviewed by the Commission, Mr Jeong was also subjected to the so-called 'pigeon torture'. *"[Y]our hands are handcuffed behind your back. And then they hang you so you would not be able to stand or sit"* Mr Jeong described. [1035] On repeated occasion, Mr Jeong had to spend a full three days at a time in the pigeon torture stress position, enduring excruciating pain:

  "There are no people watching you. There is nobody. And you can't stand, you can't sleep. If you are hung like that for three days, four days, you urinate, you defecate, you are totally dehydrated. ... [the pigeon torture] was the most painful of all tortures... [it] was so painful that I felt it was better to die."[1036] Mr Jeong informed a SSD prosecution bureau official that he had been tortured until he provided a false confession, but this was to no avail:

  "I thought the prosecutor was going to help me, but the prosecutor left and then the investigator came back in and started hitting me, started assaulting me and hanging me upside down. The next day, the prosecutor came back and said, 'Can you talk honestly?' And I said, 'Yes, yes, I'm a spy' – I confessed."[1037]

- Ms Kwon Young-hee was detained and interrogated at the SSD Interrogation Detention Centre in Musan for one week because her brother disappeared, and there was suspicion that he had fled the country.[1038] During the interrogation, Ms Kwon was beaten on the head with a club. She was also forced to write a self-criticism statement of 100 pages. Her beating led to her developing a form of tumour, which had to be surgically removed after she eventually managed to escape to the Republic of Korea.

- Mr Kim Eun-chol was detained and interrogated for 6 months at the SSD interrogation detention facility in Musan (North Hamgyong Province), because he had been illegally in Russia, and during that time tried to apply for political asylum. A confession, on the basis of which he was sent to Political Prison Camp (*kwanliso*)

[1035] Seoul Public Hearing, 21 August 2013, morning (02:04:50).
A depiction of the pigeon torture, drawn by another victim, Mr Kim Gwang-il, is reproduced at the end of section IV.E.2 c).

[1036] Seoul Public Hearing, 21 August 2013, morning (02:09:00).

[1037] Seoul Public Hearing, 21 August 2013, morning (02:09:45).

[1038] Seoul Public Hearing, 24 August 2013, morning.

No. 15, was extracted by hitting him with wooden bars. Mr Kim continues to suffer from the serious injuries sustained to his head and body:

> *"[I]t's been ten years but I still have scars. And my teeth, since I came to South Korea, the South Korean Government has given me artificial teeth, but at the time my teeth were not there. And if you look at my ear, it's been 10 years and still my ear hurts. And on my head, because I was hurt with wooden clubs. And so I still have scars, I think about 10 scars in all on the head."* [1039]

- "Ms X" was interrogated for 10 days by the SSD in an interrogation detention facility in North Hamgyong Province. Her interrogations were accompanied by systematic beatings:

  > *"They just basically beat you to near death. ... If my answer did not satisfy the official interrogator than he made me kneel down on the concrete floor and started beating me."*

  When inmates were not being interrogated, they had to kneel motionless and without speaking in their cell. If someone was caught talking, the entire cell had to perform 1,000 squats. Many people fainted during this exercise. On one occasion, Ms X noticed that a fellow inmate was lying in the cell without moving. When she brought this to the attention of the guards, they punished her by stomping on her and hitting her with stick until her head started bleeding. In addition, the entire group of people in her cell was punished by being deprived of food for three days. [1040]

716. Many suspects die at interrogation detention centres as a result of torture, deliberate starvation or illnesses developed or aggravated by the terrible living conditions.

- Mr Ji Seong-ho testified that his father was arrested as he tried to escape across the Tumen River to China.[1041] In November 2006, Mr Ji's father died as a result of injuries sustained inflicted through torture, at the hand of SSD agents. When it became apparent that he would not survive, SSD agents wheeled him with a cart to his home and dumped him there even though no one was home to take care of him. Neighbours later found him dead.
- In August 2011, SSD agents arrested the 17-year old son of the witness in Hoeryoung City, North Hamgyong Province for watching South Korean movies. He was so badly tortured that his left ankle was shattered and his face was bruised and grossly disfigured. The SSD only released him after the family raised a large bribe. Shortly after his release, the boy died from a brain haemorrhage from which he suffered as a result of the beatings endured under interrogation. [1042]
- In 2001, the witness and other inmates were beaten at an SSD Interrogation Centre in North Hamgyong Province, including by smashing her head against the wall. One man from her group of detainees died from the injuries sustained. Considering that the witness was forced to dig shallow mass graves she inferred that more inmates must have been dying in other cells. [1043]
- In 2004, the witness, a young woman, was forcibly repatriated from China and detained at the SSD Interrogation Detention Centre in Onsong (North Hamgyong Province). She suffered there from severe vaginal bleeding and pain due to an

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[1039] Seoul Public Hearing, 21 August 2013, morning (01:35:00).

[1040] Washington Public Hearing, 30 October 2013.

[1041] Seoul Public Hearing, 22 August 2013, morning.

[1042] TJH028.

[1043] TBG018.

undetected ectopic (extra-uterine) pregnancy. Despite her pleas, she received no medical assistance. She was not even allowed to keep her sanitary napkins. She was also beaten when she asked to be seated further away from the cell's defecation hole, because the stench made her nauseous. . When her health situation became critical, she managed to bribe her way out of detention using money that other cellmates had managed to hide. Doctors at the local hospital gave her no chance of survival. Still, she miraculously recovered. The witness saw other detainees dying from starvation and water-borne diseases. She also observed how a man with a heart condition collapsed during physical strenuous exercise and lay motionless. The guards later dragged the man away and he was not seen again. [1044]

- SSD agents interrogated and tortured an elderly woman at the same detention centre in Onsong in 2006. The torture and starvation she endured aggravated her pre-existing liver disease. The woman was denied medical attention in an attempt to force her brother to return from China and turn himself in to the SSD. After 15 days at the interrogation centre, the woman died. [1045]

(c) Torture and inhumane treatment by the Ministry of People's Security

717. Witnesses also described torture and deliberate starvation at the hands of Ministry of People's Security (MPS) interrogators, especially when they were being interrogated for unauthorized travel to China or other politically sensitive conduct. The detention conditions are similar to that of SSD detention, except that suspects are often allowed to receive occasional visits from family members.

- Mr A was interrogated by the MPS, because he frequently travelled to China in order to secure the means to support his family in the DPRK. He described being hit with a thick wooden club, sustaining lasting injuries to his kidneys:

> *"They hit me on my back dozens of times, and I almost fainted. I could not scream anymore. They stopped beating me because I could no longer scream … I think they were told to beat me until they got an answer."*[1046]

- Mr Kim Gwang-il described how the police officers interrogating him propped him up in the "pigeon torture" position.[1047] In this exposed position, his chest was beaten until he vomited blood. In addition, he was subjected to the "motorcycle torture" and "plane torture", where he was forced to assume extremely painful stress positions involving the prolonged extension of his arms until he collapsed.[1048] When they were not being interrogated, prisoners had to stay the entire day in their cell in a kneeling position, with the head to the ground. Prisoners who moved were beaten. Eventually, Mr Kim falsely confessed to the crimes for which the police wanted to indict him.

- Ms P recounted that she was beaten so badly during interrogations carried out by the MPS in Onsong (North Hamgyong Province) that both her legs were broken. She also suffered fractures on her spine.[1049]

[1044] TJH032.

[1045] TJH024.

[1046] Seoul Public Hearing, 22 August 2013, afternoon (02:48:46).

[1047] Seoul Public Hearing, 24 August 2013, morning.

[1048] Depictions of the "pigeon", "plane" and "motorcycle" tortures, drawn and submitted by Mr Kim Gwang-il, are reproduced at the end of this section.

[1049] Seoul Public Hearing, 21 August 2013, afternoon.

- At the Interrogation Detention Centre of the MPS in Musan, Mr Kim Song-ju witnessed how a cellmate was punished for having spoken without authorization. The guard ordered him to stick his hand through the narrow gap between the cell bars. The guard then beat the prisoner's hand about 30 times, using a metal gun cleaning tool swung with full force. "*Seeing this prisoner's hand I was shocked*", Mr Kim recalled, and elaborated:

  "He had a lump as a result of the hitting with this device that was as thick as his own hand. The guard told the prisoner to return to the cell but the prisoner could not retrieve his [swollen hand through the narrow bars] and the prisoner just squatted down and continued crying, he couldn't do anything else."[1050]

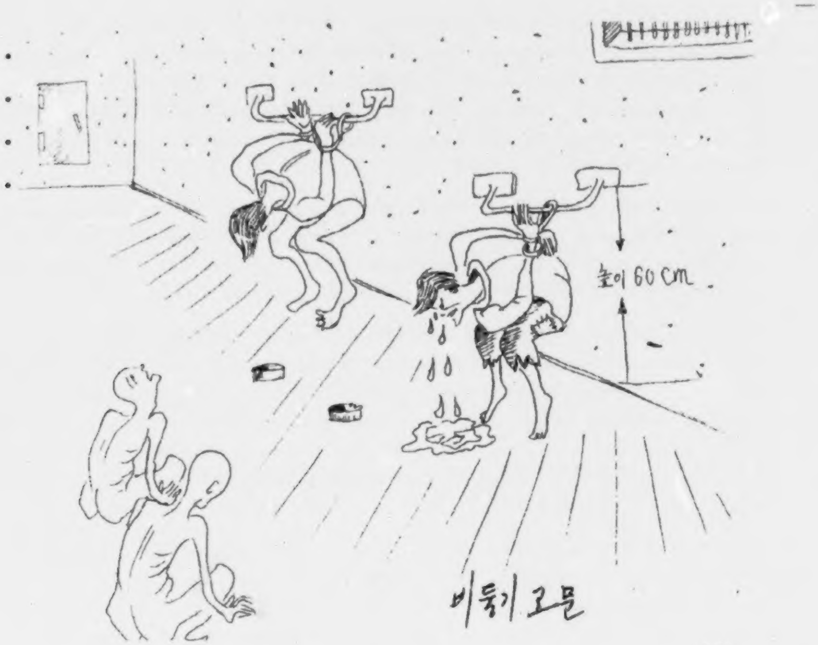
- Mr Kim Hyuk was 16 years old, when he was forcibly repatriated from China. After initial interrogation by the SSD, he was handed over to the Ministry of People's Security in Onsong (North Hamgyong Province). The police officers interrogating him beat his knees with a stick, while placing an additional stick in the back of his knees to increase the pain. After that he was subjected to the pigeon torture described above. Mr Kim was kept for longer in the interrogation centre, so that he would turn 17 years and could be tried as an adult under DPRK Law.[1051]

- In February 2011, the witness was repatriated from China. After enduring 12 days of beatings and interrogations by the SSD, she was handed over to the MPS. During two months of detention in an MPS interrogation detention Center, she and other inmates were beaten with various objects, in particular during interrogations. People who fainted during an interrogation session were accused of faking their unconsciousness and made to start again. Although she paid bribes in exchange for more lenient treatment, the witness was still subjected to beatings with wheelbarrow handles, gun barrels and pieces of wood. Detainees had to engage in forced labour during the day. Two men were beaten to death because they had not reached their work targets. A woman starved to death. While in their cells, inmates had to sit still the entire time in a cross legged position with their hands on their knees. If they moved, they would be forced to do headstands and squats or they were beaten. Some guards took advantage of the coercive setting to rape female inmates, who were taken to a nearby field for "questioning".[1052]

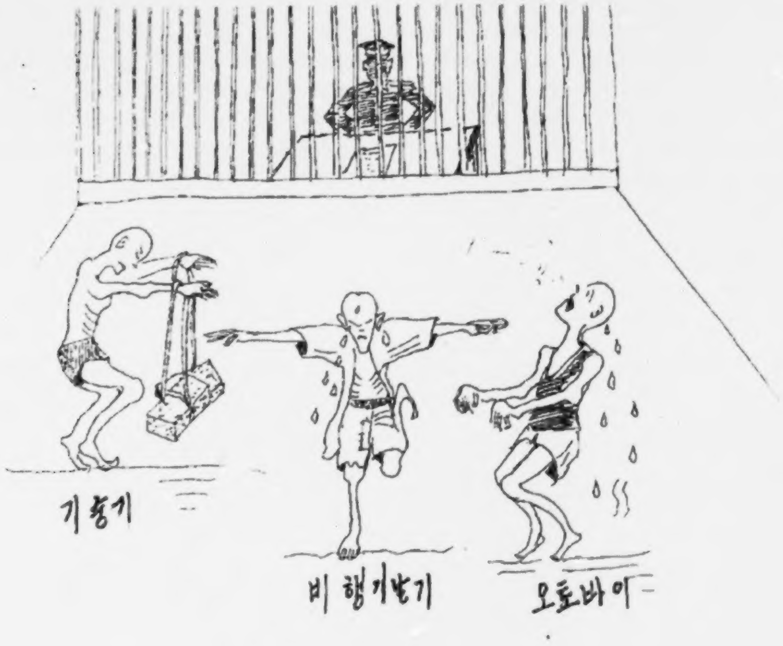
[1050] London Public Hearing, 23 October 2013, session 1 (00:36:01).

[1051] Seoul Public Hearing, 22 August 2013, morning, with additional information provided in a more detailed confidential interview.

[1052] TSH014.


높이 60 cm
비둘기 고문

Pigeon Torture – Drawing submitted by former prisoner Mr Kim Kwang-il


기중기
비행기날기
오토바이

Scale, Aeroplane and Motorcycle Torture – Drawing submitted by former prisoner Mr Kim Kwang-il

(d) Decision to punish through judicial process or extralegal means

718. At the end of the interrogation process, the victim is forced to attest to the accuracy of a confessional statement drawn up by the investigating agency by inking his finger print on the document. At the SSD, the same document also obligates the victim – under threat of severe reprisals – never to reveal any of the experiences in the interrogation detention centre.

719. At this stage, the investigating agency will also make the important decision whether to punish the suspect through the judicial process or by extra-legal means, without involving the courts. These decisions take into account the perceived gravity of the wrong, the socio-political family background (*songbun*) of the suspect and the political expediency of disposing of the case through the judicial process or by extra-legal means.

720. A rule of thumb for political cases handled by the SDD is that the more serious a political case handled is, the more likely it is that it will be disposed through extra-legal means that bypass the judiciary. The decision-making is strongly centralized and regularly involves consultation of provincial and national headquarters. If the interrogating SSD office considers that case to be so serious that it warrants enforced disappearance to a secret political prison camp or summary execution, this usually requires a decision from at least SSD national headquarters.

721. Courts appear not to ever be involved in the decision to send a person to a political prison camp. This exclusion violates not only international law, but also article 127 of the DPRK Code of Criminal Procedure Code. According to that provision, the Provincial People's Courts have jurisdiction over cases involving political crimes that may result in life-time imprisonment. Occasionally, high profile cases involving what is seen as a major wrong are referred to the courts, when the authorities consider it politically expedient to provide a highly visible warning to the general public, notably through a public trial and execution. The Special Military Court operated by the State Security Department is often involved in such cases.[1053]

722. However, the judicial route is usually reserved for political cases of medium severity. The investigating SSD section hands such cases over to the SSD Prosecution Bureau to prepare the indictment and trial. Depending on the seriousness of the political wrong, the SSD Prosecutor seeks a sentence of execution, imprisonment in an ordinary prison camp or a short-term forced labour detention camp.

723. When the SSD determines that the suspect committed no more than a minor political wrong or the case is deemed non-political, it usually refers the case for further interrogation to the MPS.

724. Where the MPS handles a case, the reverse rule of thumb applies: The more serious cases are disposed of through the judiciary, while the courts are often bypassed in less serious cases.[1054]

[1053] For instance, the death sentence preceding the execution of Mr Jang Song-Thaek was handed down by the Special Military Court of the State Security Department handed down. See "Traitor Jang Song Thaek Executed", *KCNA*, 13 December 2013. Available from http://www.kcna.co.jp/item/2013/201312/news13/20131213-05ee.html. See also below, section V.E.5 a).

[1054] The Commission could not establish how much autonomy the MPS enjoys in taking decisions on how to dispose of a case. According to the Seoul-based Korea Institute for National Unification (KINU), cases handled by the MPS are usually referred to a People's Safety Committee dominated by the Workers' Party of Korea, which instructs the MPS how to handle the case. See Kim Soo-am, "The North Korean Penal Code, Criminal Procedures, and their Actual Applications", KINU, 2006, p. 40.

725. If the judicial route is pursued, the MPS cooperates with the Office of the Prosecutor, which seeks prison sentences or, where deemed appropriate and politically expedient, the death penalty.

726. In cases of relatively minor wrongs, the MPS commits a suspect to imprisonment and forced labour in a short-term forced labour detention facility for periods ranging from a few months to two years. In some cases, county level SSD offices may follow the same practice in case they end up dealing with suspects of relatively minor wrongs.

727. Such non-judicial prison "sentences" violate the suspect's right to a fair and public hearing by a competent, independent and impartial tribunal established by law, which is established by article 14 of the ICCPR. They would also appear to be incompatible with the DPRK's own laws, in particular its Administrative Penalty Act that allows for administrative penalties of unpaid labour, but not imprisonment. Such non-judicial sentences would also constitute the criminal offence provided for under article 252 of the Criminal Code. However, the Commission has not been able to document a single case, in which security officials were convicted for illegally usurping the sentencing powers of the judiciary in contravention of article 252 of the Criminal Code.

728. SSD and MPS officials operate under great pressure to produce perpetrators of political wrongs. They are often afraid of becoming the targets of suspicion and punishment, if they appear to be too lenient with suspects. As a result, even those unjustly accused of political wrongs often find it difficult, if not impossible to escape the control of the security apparatus without any punishment. However, interventions by politically connected friends, and increasingly also the payment of bribes, often allow suspects of lesser wrongs to secure their release.

3. Political prison camps

729. If they are not executed immediately, persons held accountable for major political wrongs are forcibly disappeared to political prison camps that officially do not exit. Most victims are incarcerated for life, without chance of leaving the camps alive. Camp inmates are denied any contact with the outside world. Not even their closest family members receive any notification as to whether they are dead or alive.

730. The camps serve to permanently remove from society those groups, families and individuals that may politically, ideologically or economically challenge the current political system and leadership of the DPRK. The limited information that seeps out from the secret camps also creates a spectre of fear among the general population in the DPRK, creating a powerful deterrent against any future challenges to the political system. Because the camps are generally located in remote, mountainous areas, the innocuous expression that someone has been "sent to the mountains" has become synonymous in the DPRK with state-sponsored enforced disappearance. Several witnesses described to the Commission that people were aware of the camps and had a vague idea about violations going on in the camps, which made them very afraid.[1055]

- Ms Jeong Jin-hwa described that the camps were generally known and feared:

  "[E]very North Korean knows [about the camps]. We have a perception that once you are in, there is no way out. It's a cruel, cruel place, and you would guess, you

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[1055] A survey among persons who fled the DPRK, carried out by the Seoul-based, non-governmental Database Center for Human Rights (NKDB), found that 75 per cent of respondents knew about the existence of political prison camps, while they still lived in the DPRK. See NKDB, *Political Prison Camps in North Korea Today*, p. 16.

> *are sometimes beaten by the police and so from that you can imagine how harsh the treatment would be inside."*[1056]

- Mr. Kim Hyuk also indicated that everybody knows about the camps, although what happens inside the camps and the kind of life the inmates would live were not known specifically:

  > *"We know that once you are in, there's no way out. Everybody knew about that. And we knew that there is no due process to enter the [political prison camp] and also that a family can disappear overnight and then people would get the hint that the family had been sent to [a prison camp]."*[1057]

731. The authorities strenuously deny the existence of political prison camps in the DPRK.[1058] The very existence of political prison camps is considered a state secret, even though international human rights groups have reported about them since the late 1980s.[1059] The authorities are deploying considerable efforts to conceal details about the prison camps from the outside world. The camps are disguised as military or farming facilities and only selected officials with a special security clearance are permitted to visit them. No human rights organization has ever been given permission to visit the areas where the camps are located. Even in classified internal terminology, the camps are euphemistically called "controlled areas" (*kwanliso*). Their inmates are referred to as "moved people" (*ejumin*). The Bureau of the State Security Department that administers the camps (Bureau No. 7) is known as the "Farming Bureau". Confidential witness testimony indicates that diplomats of the DPRK are under strict instructions never to admit to the existence of the camps.

732. Guards, released inmates and communities neighbouring the camps are threatened with severe reprisals if they disclose any information about the camps. Most disturbingly, the camp authorities have received orders to kill all prisoners in case of an armed conflict or revolution so as to destroy the primary evidence of the camps' existence. The initial order seems to have been given by Kim Il-sung himself, and the order was later reaffirmed by Kim Jong-il.

- Mr Ahn Myong-chol testified that in case of a war, the guards were supposed to "*wipe out*" all the inmates "*to eliminate any evidence*" about the existence of the camps. Former guards from other camps and officials confidentially interviewed by the Commission were aware of the same order. Mr Ahn and other witnesses also explained that specific plans exist on how to implement the order and that drills were held on how to kill large numbers of prisoners in a short period of time.[1060]

- Mr Kim Eun-chol started speaking publicly about his three years of detention at Political Prison Camp No. 15 once he escaped to the Republic of Korea. The authorities retaliated by executing his brother in accordance with the guilt by association policy. The tragic event caused his sister to take her own life.[1061]

[1056] Seoul Public Hearing, 22 August 2013, afternoon (01:07:50).

[1057] Seoul Public Hearing, 22 August 2013, morning (00:50:45).

[1058] During the Universal Periodic Review, the delegate of the Democratic People's Republic of Korea insisted that "so-called political prisoners' camps do not exist", admitting only to the existence of reform institutions where persons sentenced of anti-state or other crimes serve sentences of reform through labour. See A/HRC/13/13, para. 45. See also the statements of the DPRK delegation denying the existence of political prison camps before the Human Rights Committee reflected in CCPR/C/SR.1945 , para. 31.

[1059] See Minnesota Lawyers' International Human Rights Committee and Human Rights Watch/Asia, *Human Rights in the Democratic People's Republic of Korea* (Minneapolis, Minnesota Lawyers International Human Rights Committee, 1988).

[1060] Testimony of Mr Ahn Myong-chol, Seoul Public Hearing, 21 August 2013, afternoon (00:18:10). Confidential interviews with witnesses TJH004 and TJH041. See also the testimony provided by Mr K and Mr Song Yoon-bok, Tokyo Public Hearing, 30 August 2013, afternoon.

733. Despite all efforts to deny and conceal the existence of the political prison camp system, the Commission finds that an extensive system of political prison camps has been in continuous existence since the late 1950s and continues to operate up to the present time. It has interviewed numerous people who have personally experienced or seen the political prison camps, including former inmates and guards. Several of these witnesses testified in the public hearings.[1062]

734. Additionally, the Commission has obtained satellite images of the camps and analysis provided by professional satellite imagery analysts, supplemented by the testimonies of former guards and inmates who could identify relevant structures.[1063] These images not only prove to the Commission's satisfaction the continued existence and on-going operation of large-scale detention facilities. They also provide a clear picture of the evolution of the prison camp structure and corroborate the first-hand accounts received from former prisoners and guards. During the course of the Commission's public hearings, several former prisoners and guards were able to identify and describe the locations of camps on satellite images and to identify specific structures, where forced labour, torture, executions or other camp-related activities are being carried out.

[1061] Seoul Public Hearing, 21 August 2013, morning.

[1062] Seoul Public Hearing: Mr Shin Dong-hyuk, 20 August 2013, afternoon; Ms Kim Young-soon; Mr Jeong Kwang-il and Mr Kim Eun-chol, all 21 August 2013, morning; Mr Ahn Myong-chol, 21 August 2013, afternoon; Mr Ji Seong-ho, 22 August 201, morning; and Mr Kang Chol-hwan, 24 August 2013, afternoon. Tokyo Public Hearing: Mr K, 30 August 2013, afternoon. London Public Hearing: Ms Park Ji-hyun, 23 October 2013, session 2.

[1063] During the Seoul Public Hearing, former inmates Mr. Shin Dong-hyuk (20 August 2013, afternoon), Mr. Jeong Kwang-il (21 August 2013, morning) and former guard Mr. Ahn Myong-chol (21 August 2013, afternoon) displayed and explained satellite images covering Camps No. 14 and 15. During the Washington Public hearing (31 October 2013, afternoon), David Hawk of the U.S. American, non-governmental Committee for Human Rights in North Korea (HRNK) and professional satellite imagery analyst Joel S. Bermudez provided evidence relating to Camp 18 and 22. In addition, HRNK submitted recent satellite imagery on Camp No. 25, which is also included in the public report of the Committee for Human Rights in North Korea/Digital Globe, "North Korea's Camp No. 25", 2013. Available from http://hrnk.org/uploads/pdfs/HRNK_Camp25_201302_Updated_LQ.pdf.
Amnesty International submitted to the Commission recent satellite imagery and pertaining expert analysis covering Camps No. 14, 15 and 16. The satellite images and related information submitted is also reflected in Amnesty International, "North Korea: New Satellite Images show continued Investment in the Infrastructure of Repression", 2013. Available from http://www.amnesty.org/en/library/info/ASA24/010/2013/en and Amnesty International, "North Korea: New images show blurring of prison camps and villages", 2013. Available from http://www.amnesty.org/en/news/north-korea-new-images-show-blurring-prison-camps-and-villages-2013-03-07
Some of the images presented at the public hearings and in submissions, as well as a map showing the approximate location of political and ordinary prison camps are available on the website of the Commission: www.ohchr.org/EN/HRBodies/HRC/CoIDPRK.
The satellite images at the disposal of the Commission were obtained from commercial satellite services. The Commission was informed that the intelligence services of the United States of America, the Republic of Korea and perhaps also other countries are likely to have higher resolution images of the camps. The declassification of such imagery would provide an even clearer picture of the evolution and current situation of the camps.

(a) Location and size of political prison camps

735. Four large prison camps are known to exist in the DPRK today. In the DPRK's own internal terminology, the camps are assigned numbers to distinguish them[1064]:

- Political Prison Camp No.14 covers 150 square kilometres of a mountainous area near Kaechon City in South Pyongan Province.[1065] It appears to have been in existence since the 1960s and was transferred to its present location in the early 1980s. All inmates are incarcerated for life. Only one prisoner is known to have successfully escaped the camp – Mr Shin Dong-hyuk who testified publicly before the Commission. According to what can be seen on satellite images, the camp appears to have been expanded since his escape in 2005.[1066]
- Political Prison Camp No. 15 is spread out over an area of 370 square kilometres covering several valleys in Yodok County, South Pyongan Province.[1067] While the inmates of all other existing prison camps are incarcerated for life without any chance of release, [1068] Camp No. 15 distinguishes itself in that it has been divided into a total control zone (*jeontongjekyooyeok*) and a revolutionizing zone (*hyukmyunghwakooyeok*). Total control zone inmates are considered ideologically irredeemable and incarcerated for life. Revolutionizing zone prisoners are incarcerated for less serious wrongs and tend to come from privileged families with very good *songbun*. In the past, they had a chance of being released after a few years of incarceration, if they convinced the camp authorities through hard work, diligent participation in daily indoctrination sessions, and often also the payment of bribes, of their ideological rehabilitation. [1069]
- Political Prison Camp No. 16 covers about 560 square kilometres of rugged terrain in Myonggan, North Hamgyong Province.[1070] It is located in close proximity to the P'unggye-ri nuclear test site. First-hand witness testimony indicates that the camp has existed since the 1970s, although it was much smaller at that time.[1071] Inmates live in two settlement areas in the torthwestern and southeastern areas of the camp.
- A detention facility often referred to as Political Prison Camp No. 25 is located near Chongjin City, North Hamgyong Province.[1072] While Political Camps No. 14, 15

[1064] It is common practice in the DPRK to assign numbers to institutions. However, the system for the numbers assigned to different Political Prison Camps (*kwanliso*) is not clear. The camps do not seem to have been numbered based on the order of their establishment, and there also appear to be missing or unknown numbers.

[1065] The GeoCoordinates of the central area of Camp No. 14 are 39.3415N -126.0319E.

[1066] See testimony of former Camp No. 14 inmate Mr Shin Dong-hyuk, Seoul Public Hearing, 20 August 2013, afternoon.

[1067] The GeoCoordinates of the central area of Camp 15 are 39.4032N-126.5059E.

[1068] Only in very rare occasions, a high-level officials sent to a total control zone might be released based on instructions from the very top. See Mr Ahn Myong-chol, Seoul Public Hearing, 21 August 2013, afternoon. One such reported case is that of Mr Kim Yong, a former Lieutenant-Colonel, who was incarcerated at Camp No. 14 after details about his father's bad *songbun* were discovered. See David Hawk, *The Hidden Gulag*, 2nd ed. (Washington D.C., HRNK, 2012), pp. 51 ff.

[1069] Seoul Public Hearing: Ms Kim Young-soon; Mr Jeong Kwang-il and Mr Kim Eun-chol, 21 August 2013, morning; Mr Ahn Myong-chol, 21 August 2013, afternoon; and Mr Kang Chol-hwan, 24 August 2013, afternoon. Some observers fear that releases from the revolutionizing zones are no longer carried out. See testimony of Mr David Hawk, Washington Public Hearing, 31 October 2013, afternoon.

[1070] The GeoCoordinates for the central area of Camp 16 are 41.1849N 129.2032E.

[1071] TJH041.

[1072] The GeoCoordinates for Camp 25 are 41.5002N 129.4334E.

and 16 each have tens of thousands of prisoners, Camp No. 25 has a population of a few thousand prisoners. It also distinguishes itself from the other camps, because it looks more like a maximum security prison with a main block surrounded by high walls. Its prisoners are incarcerated for life without trial on political grounds, which is why Camp No. 25 can be considered a political prison camp. In recent years, Camp No. 25 has been expanded. It almost doubled in surface-size since 2006 and now covers an area of 980 square metres.

736. Political Prison Camps No. 14, 15 and 16 are administered by the SSD. It is likely, but not entirely certain, that the SSD also controls Camp No. 25.

737. The Commission cannot exclude the possibility that there are additional, so far undetected secret detention facilities, where political prisoners are detained in conditions similar to those of the known political prison camps. In particular, some witnesses provided information suggesting that the KPA Military Security Command may operate smaller special prison camps in undisclosed locations, where officers and ordinary soldiers are held without trial on political grounds.[1073]

- Mr Kim Joo-il, a former KPA officer, explained how the Supreme Leader Kim Jong-il personally visited his battalion in 1996. When Kim Jong-il noticed that the soldiers were not provided with food, he immediately divested the head of the battalion of his rank and had him sent, without trial, to a KPA prison camp. Mr Kim Joo-il indicated that these camps were detention facilities run by the KPA and located on KPA facilities. He added: "*Some people served a life sentence there. Anyone who would be released from these military prisons, they could no longer survive. They couldn't get a job because of the political nature of their crime.*"[1074]

738. It is certain that other political prison camps existed in the past. There may have been 12 camps or more. Over time, the system has been consolidated. Some camps were closed down and the remaining inmates transferred to other sites, which were expanded.[1075]

- From the 1960s until its closure in mid-2012, the SSD operated Political Prison Camp No. 22 near Hoeryong (North Hamgyong Province). The authorities are believed to have closed the camp, because of its proximity to the Chinese border, which increased the risk of successful escapes and of information about the Camp being transmitted to the outside world.[1076]

  Before the closure process was started in 2009 or 2010, Camp No. 22 was believed to have had 30,000-50,000 inmates. There is no information that any inmates of Camp No. 22 were released. The Commission has not been able to establish the fate of the large numbers of prisoners that remain unaccounted for. Observers offer divergent opinions on what happened to the prisoners of Camp No. 22. Some take the view that the prisoners of camp 22 were distributed between camps 14, 15 and 16. [1077]. Others have indicated that satellite imagery from other camps does not suggest any new construction of a scale that would support the inflow of the entire population of Political Prison Camp No. 22. They also presented allegations that food supplies were diverted from Camp No. 22 in 2009 and 2010, which caused a large number of the inmates to starve to death.[1078]

[1073] TLC025 and TJH041. See also NKDB, *Prisoners in North Korea Today*, 2nd ed. (Seoul, NKDB, 2012), p. 93 referring to a camp operated by the KPA Military Security Command in Hoechang County, South Pyongan Province. See also Good Friends, "North Korea Today No. 465", 25 July 2012. Available from http://www.goodfriendsusa.blogspot.ch/2012/08/north-korea-today-no-465-july-25-2012.html, providing details on a KPA Military Security Command detention camp in Kumya County, South Hamgyong Province.

[1074] London Public Hearing, 23 October 2013, session 4 (00:34:26).

[1075] Relevant testimony was provided by Mr Ahn Myong-chol in a follow-up interview to his public hearing testimony and confidential interviews with Ms Kim Hye-sook; TJH004; and TJH041. See also NKDB, *Political Prison Camps in North Korea Today*, pp. 68 ff.

[1076] Lee Keum-soon, "Human Rights Conditions of the Political Prison Camps in North Korea", in KINU, *UN Human Rights Mechanisms and Improvement of Human Rights Conditions in North Korea*, 2013, p. 195, p. 206. See also David Hawk, *North Korea's Hidden Gulag: Interpreting Reports of Changes in the Prison Camps* (Washington D.C., HRNK, 2013), p. 14.

- Political Prison Camp No. 11, controlled by the State Security Department, was located on the upper slope of the Kwanmo mountain in North Hamgyong province. Initially, it was mainly used to detain high-profile prisoners and their families. At the end of the 1980s, this camp appears to have been closed since a villa for Kim Il-Sung was supposed to have been constructed in the area. The surviving prisoners were distributed between Camps 16 and 22.[1079]
- Political Prison Camps No. 12 and 13 (also run by the State Security Department) were in what is today Onsong County, North Hamgyong Province. [1080] Inmates included families of former landowners, supporters of rival socialist factions and collaborators with the Japanese colonial administration. The camps were closed in the early 1990s. The surviving prisoners were apparently transferred to Camp No. 22.
- Since at least the early 1960s, a political prison existed in Sungho, near Pyongyang, which is sometimes referred to as Camp No. 26.[1081] It was closed in the early 1990s after a former political prisoner had disclosed its existence, and Amnesty International reported extensively on the camp.[1082]

739. Until 2006, the Ministry of People's Security and its predecessor, the Social Safety Agency, also managed political prison camps, subject to oversight by the State Security Department and the Workers' Party of Korea. Although the MPS camps did not share all features of the existing camps (e.g. the prohibition of marriage), these camps were similar to the currently existing camps in that inmates suffered enforced disappearance and were imprisoned without trial in conditions of starvation and forced labour.

- Located near Camp No. 14 on the south bank of the Taedong River, Camp No. 18 in Bukchang County (South Pyongan Province) may have held as many as 50,000 prisoners in the late 1990s. Political Prison Camp No. 18 was similar to the revolutionizing zone of Political Prison Camp No. 15 in that at least part of the camp population could secure an early release if deemed to be ideologically

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[1077] Lee Keum-soon, "Human Rights Conditions of the Political Prison Camps in North Korea", id..

[1078] See testimony of Mr Song Yoon-bok, Tokyo Public Hearing, 30 August 2013, afternoon and Mr David Hawk, Washington Public Hearing, 31 October 2013, afternoon. See also David Hawk, *North Korea's Hidden Gulag: Interpreting Reports of Changes in the Prison Camps* (Washington D.C., HRNK, 2013), p. 20.

[1079] See testimony of Mr K and Mr Song Yoon-bok, Tokyo Public Hearing, 30 August 2013, afternoon and Mr David Hawk, Washington Public Hearing, 31 October 2013, afternoon. See also NKDB, *Political Prison Camps in North Korea Today*, p. 73. David Hawk, *The Hidden Gulag*, p. 28.

[1080] Confidential interview with TJH041, TJH011. See also NKDB, *Political Prison Camps in North Korea Today*, pp. 74-77.

[1081] At the Tokyo Public Hearing, 30 August 2013, afternoon, Mr Shibata Hiroyuki presented information indicating that his brother Shibata Kozo was incarcerated in this prison for political reasons from the early 1960s until the early 1990s. In a follow-up interview to his public hearing testimony, Mr Ahn Myong-chol also confirmed that a political prison known as Camp 26 existed at Sungho.

[1082] See Amnesty International, "North Korea: Concern about the fate of Shibata Kozo and his family", September 1994 (ASA 24/007/1994).

rehabilitated.[1083] It appears that Political Prison Camp No. 18 was gradually downsized until the site in Bukchang, South was closed down in 2006. Today, a short-term labour detention facility has been placed on the premises formerly occupied by Political Prison Camp No. 18. Most of the surviving prisoners of Political Prison Camp No. 18 seem to have been released, although many chose to continue living and working on the camp premises for lack of another place to go. A small segment of the prisoners from Camp No. 18 were apparently not cleared for release. They may have been transferred to a new prison camp site in nearby Ch'oma-Bong. (Kaechon County, South Pyongan Province), which borders Camp No. 14.[1084]

- Political Prison Camp No. 17 was located in Toksong (South Hamgyong Province) and controlled by the Social Safety Agency, the predecessor organization of the Ministry of People's Security.[1085] The camp was initially closed in the mid-1980s. Some witness testimony indicates that the camp was temporarily reopened in the late 1990s since Political Prison Camp No. 18 was unable to handle the large inflow of new detainees arrested in connection with the *shimhwajo* operation.[1086]
- The Social Safety Agency reportedly also operated Camp No. 19 in Tanchon, South Hamgyong Province. The camp was closed around 1990 and most prisoners were released. Camp No. 23 in Toksong Country, South Hamgyong Province, also operated by the Social Safety Agency, was transformed into an ordinary prison in 1987.[1087]

740. In the absence of direct physical access to the camps, it is extremely difficult to provide reliable estimates on the overall size of the prison camp population at different points in time. The earliest estimate, provided in 1982 by the National Intelligence Service of the Republic of Korea, refers to a prison population of 105,000 prisoners. Later estimates, which were provided by non-governmental organizations, based on satellite images and testimony from guards and prisoners who were in the camps in the 1990s or early 2000s, range from 150,000-200,000 inmates.[1088]

741. Observers who presented information to the Commission generally agree that there has been a drop in the political prison camp population over the last few years. the Korea Institute for National Unification (KINU) estimates that between 80,000 and 120,000 people are detained in the political prison camps today.[1089] This figure, which KINU bases on analysis of recent satellite imagery analysis and first hand-testimony, takes into account the release of prisoners from Political Prison Camp No. 18 and the uncertainty about the fate of the prisoners of Political Prison Camp No. 22. Similarly, the non-governmental

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[1083] Interview with former Camp 18 inmate Ms Kim Hye-sook and Witnesses TGC004, TSH029, TAP012.

[1084] Satellite images show a newly constructed restricted area of about14.6 square kilometres in Ch'oma Bong, which features housing facilities, barbwire fences and guard posts This facility is located just west of Camp No. 14 and shares part of its perimeter with Camp No. 14. See testimony of professional satellite analyst, Mr Joseph S.Bermudez Jr., Washington Public Hearing, 31 October 2013, afternoon.

[1085] TJH004. NKDB, *Political Prison Camps in North Korea Today*, p. 16. Song Yoon-bok, Tokyo Public Hearing, 30 August 2013, afternoon, also referred to Camp 17, indicating that it may still operate.

[1086] See below, section IV.E.3 b).

[1087] See also NKDB, *Political Prison Camps in North Korea Today*, pp. 105 ff. The existence of camp 19 was confirmed by former official TBG031.

[1088] See NKDB, *Political Prison Camps in North Korea Today*, p. 71; David Hawk, *The Hidden Gulag*, pp. 27 ff.

[1089] KINU, *White Paper on Human Rights in North Korea* (2013), p. 148.

Committee on Human Rights in North Korea (HRNK) submitted that a figure of 80,000 to 130,000 prisoners is an accurate rendering of the prison camp population.[1090] These figures are also in line with a 2011 estimate of the Database Centre for North Korean Human Rights (NKDB), which placed the size of the camp population at a minimum of 130,500 people, but did not yet account for the closure of Camp No. 22 and the related uncertainty about the fate of the prisoners of Camp No. 22.[1091]

742. The observed drop in the number of inmates may be attributed, to some extent to the release of most of the prisoners who were held in Camp No. 18. However, an equally important factor is the extremely high rate of deaths in custody, coupled with the fact that the prisoners are generally not allowed to have children. In the absence of further releases, a drop in the camp population therefore merely signifies that the inflow of new inmates does not keep up with the high rate at which prisoners are dying due to starvation, neglect, arduous forced labour, disease and executions.

(b) Evolution and purpose of the political prison camp system

743. The DPRK began to establish its system of secret political prison camps in the late 1950s, as large purges were carried out under Kim Il-sung.[1092] The system was inspired by the prison camps managed by the Gulag in the Soviet Union during the rule of Joseph Stalin. Many features of the DPRK camps are even harsher than what could be found in the Gulag camps.[1093]

744. The camps rapidly grew in size, as Kim Il-sung consolidated his rule by purging political opponents and rival socialist factions and suppressing any expression of the Christian and Chondoist religions. While many of the primary targets of the purges were often executed, lower-ranking officials and other persons associated with them disappeared to the camps. A large number of additional victims, including senior officials, were purged between the 1970s and 1990s to preclude any opposition within the Workers' Party of Korea and the state apparatus to the dynastic succession of Kim Jong-il following the death of his father Kim Il-sung.

745. On the basis of the principle of "guilt by association" (*yeon-jwa-je*), the entire family of those purged frequently also ended up in the political prison camps including the

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[1090] David Hawk, *North Korea's Hidden Gulag: Interpreting Reports of Changes in the Prison Camps*, p. 36.

[1091] NKDB, *Political Prison Camps in North Korea Today*, p. 111.

[1092] Confidential Interview with TJH041, a former political prison camp official. Hwang Jang-yop, the most senior official who ever fled from the DPRK, has reportedly also testified that the first camp was established in 1958 in Bukchang County, South Pyongan Province. See NKDB, *Political Prison Camps in North Korea Today*, pp. 95-96.

A diplomatic cable sent in 1959 by the Ambassador of German Democratic Republic (GDR) notes the following: "In recent time the persecution of comrades who express a different opinion has been increased. They are being sent to rural areas, mines, hydropower dams and also into prison camps." In 1957, the GDR Embassy already noted information according to which students who had returned from Poland had been sent to prison camps in Pyongyang that were guarded by soldiers. For a citation of the original German texts, which were found in GDR archives after Germany's reunification, see Liana Kang-Schmitz, *Nordkoreas Umgang mit Abhängigkeit und Sicherheitsrisiko*, pp. 225-226. On the purges see also section III.D.

[1093] Most inmates of the Soviet Union prison camps operated by the *Glavnoye upravleniye lagerey i koloniy* (Main Administration of Corrective Labor Camps and Labor Settlements), better known by its acronym GULag, could occasionally receive visits and correspondence from family. However, the prisoners in the DPRK's political prison camps are held completely incommunicado, making them more vulnerable to gross violations. See David Hawk, *The Hidden Gulag*, p. 32. For a comprehensive description of the GULag system see Alexander Solzhenitsyn, *The Gulag Archipelago* (1973).

parents, spouses, siblings and children (regardless of age). Only female relatives who were already married outside the family at the time of the purge were usually spared. Because of the strict patriarchal system, they were considered to belong to another family. Spouses sometimes escaped the prison camps, if they underwent an immediate forced divorce.

- In 1981, the witness's entire family, including two children aged 2 and 4, was arrested by agents of the State Security Department and sent to Political Prison Camp No. 12.[1094] The witness, who thinks she was spared imprisonment because she had married into another family, never saw her family again. The family apparently became victim to the purges of side arms of Kim Il-sung's family that were conducted to prevent challenges to the succession of Kim Jong-il. The family were relatives of Kim Hwan-hyup, who was related by marriage to Kim Jong-il. Despite being a high-ranking official of the Korean Worker's Party, Kim Hwan-hyup was reportedly himself purged.
- In 1997, the Ministry of People's Security launched a comprehensive investigation, known as *shimhwajo* to identify officials who had concealed politically sensitive aspects of their family history.[1095] The operation was also strategically used to purge "old-guard" officials whose loyalty to Kim Jong-il was considered questionable. An estimated 20,000 suspects disappeared without trial in Political Prison Camp No. 18, although many were later released. In a subsequent counter-purge, thousands of MPS officials were arrested by the KPA Military Security Command and the SSD. In prison, they were often subjected to particularly harsh treatment and many died in detention. One former official relayed statistics kept by the MPS Corrections Bureau according to which only few of the MPS officials imprisoned during the counter-purge survived their prison stint.[1096] Mr Kim Gwang-il testified that guards at *Kyohwaso* No. 12 apparently received orders to single out particular prisoners for food ration cuts and other harsh punishments designed to kill them. He named two prisoners who had ended up in a *kyohwaso* on political charges and were killed in that manner. One of them was detained in reaction to the *shimhwajo* operation.[1097]

746. "Class enemies", including owners of large landholdings or factories, would-be defectors to the Republic of Korea and collaborators with the Japanese colonial administration, have also been disappeared to the prison camps. The Commission finds that the camp system served the purpose of re-engineering the social fabric of the DPRK in conformity with the ideology of the *Suryong* system by purging entire groups and individuals from general society. This purpose finds clear expression in the fact that camp inmates were considered to have lost all their citizenship rights. For all intents and purposes, they no longer exist as a part of the DPRK's citizenry.

747. The Commission also finds that the purge of "class enemies" was extended to descendants up to the third generation, i.e. the grandchildren of the original wrongdoer. In the rare event that prisoners have children in the camp, even those children became prisoners. The ideological basis for such intergenerational punishment is ascribed to an instruction reportedly issued by Kim Il-sung himself according to which: "Class enemies and factionalists, whoever they are, their seed must be eliminated through three

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[1094] TJH011.

[1095] Testimony provided by Witnesses TJH004, TJH039, TJH044. See also the witness testimony reflected in National Human Rights Commission of Korea [Republic of Korea], Compilation of North Korean Human Rights Violations (2012), pp. 62, 63 and 68; NKDB, *Political Prison Camps in North Korea Today*, pp. 133, 476 & 478.

[1096] TCC014.

[1097] Seoul Public Hearing, 24 August 2013, morning.

generations."[1098] Camp guards and other security officials are taught this doctrine during their basic training. "According to Kim Il-sung's instructions … three generations of the inmate should be annihilated", former camp guard Ahn Myung-chol recalled. [1099] In several camps, the guards were also reminded of the three generations principle through large boards displaying Kim Il-sung's instruction.[1100]

- Mr Shin Dong-hyuk was born in Political Prison Camp No. 14 in 1981, as a result of a relationship the guards had arranged between his parents, who had no choice in the matter. His father and his family had apparently been imprisoned in the camp, because one of Mr Shin's uncles had fled to the Republic of Korea. Mr Shin never found out why his mother was in the camp. Mr Shin described how he had been indoctrinated to internalize the guilt by family association principle that he never questioned the basis and conditions of his imprisonment:

  > *"I was born a criminal and I would die a criminal that was my fate … Where I lived only two kinds of people existed, the guards who had guns and the people who are inmates wearing uniforms. Inmates were born inmates, so we lived like inmates; that was our fate... Nobody taught us that way but that was all that we could see... so that's how we lived."*[1101]

- Ms Kim Hye-sook was 13 years old, when SSD agents arrested her just as she returned from school.[1102] She was taken to Political Prison Camp No. 18, where her entire family was already incarcerated. No charges were ever presented against any family members. Inmates were warned that they be executed if they enquired about the reasons for their arrest or talked with other inmates about it. When her father one day challenged the guards about why he was kept at the camp, he was taken away and the family never saw him again. During 28 years of incarceration, Ms Kim never found out why she had to endure such a long time of starvation and forced labour. She even started blaming her parents. In 2001, as Political Prison Camp No. 18 was downsizing, she was released. From a relative she found out that the family had been punished because her grandfather had fled to the Republic of Korea during the Korean War.

- In 1975, the entire family of the witness were arrested by the State Security Department, without being presented with reasons for his arrest or any criminal charges. The arrests were part of a larger operation in the city of Nampo directed against the descendants of landowners and other "class enemies". Altogether 300 people were crammed into train carriages and sent to Political Prison Camp No. 18. The witness was released in 2006 when Camp No. 18 was closed.[1103]

[1098] According to former SSD political prison camp Ahn Myong-chol, Kim Il-sung made this statement first on the occasion of an unpublished speech before officials of the Ministry of State Security in 1958, during which he addressed the ongoing purges of rival factions. See Kim Yong-sam with Ahn Myong-chol, Political Prisoners' Camps in North Korea (Seoul, Center for the Advance of North Korean Human Rights, 195), p. 52.
On 1 March 1958, the Ambassador of the Soviet Union to the DPRK recorded in his journal that Kim Il-sung told him that on that day he would be delivering a speech before officials of the Ministry of State Security making reference to "increasing the struggle against the intrigues of counterrevolutionary elements". See Journal of Soviet Ambassador to the DPRK A.M. Puzanov for 1 March 1958, as translated by Gary Goldberg and published by the Wilson Center History and Public Policy Program Digital. Available from http://digitalarchive.wilsoncentre.org/document/115970.
Other sources have indicated that Kim Il-sung first made the statement in 1972. See Ian Jeffries, *North Korea, 2009-2012: A Guide to Economic and Political Developments* (Routledge, 2012), p. 28; David Hawk, *The Hidden Gulag*, p. 29.

[1099] Seoul Public Hearing, 21 August 2013, afternoon

[1100] Confidential interviews with Ahn Myong-chol.

[1101] Seoul Public Hearing, 20 August 2013, afternoon (00:43:36).

[1102] Ms Kim could not participate in the public hearings. The Commission conducted a video-conference-based interview with her, during which she agreed to have her name published in this report.

748. The political prison camp system has served, and continues to serve, the purpose of preventing the emergence of any future ideological, political or social challenges to the *Suryong* system and preserving its power base. Many inmates were sent to the prison camps because they, or their family members, had criticized the DPRK's political system, especially if the Supreme Leader was the direct target of the criticism.

- Mr Ahn Myong-chol described how his father, who was an official managing a public distribution centre, had said to other higher-ranking officials that the food shortage in the DPRK existed because the people on the top were not doing their job correctly. Realizing his political crime, Mr Ahn's father took his own life. Mr Ahn's mother and three siblings, including a sister who was still an elementary school student, were all arrested and sent to a political prison camp. He escaped incarceration only by fleeing across the border into China.[1104]

- The uncle of the witness disappeared after an informant in his own family denounced him as having said that Kim Jong-il was not made of the right material to be the Supreme Leader. The last the family heard about the uncle was that he had been sent to Political Prison Camp No. 22.[1105]

749. In some cases, entire families disappeared because one member divulged "state secrets", such as politically sensitive information about the private lives of the ruling Kim family.

- Ms Kim Young-soon, a former professional dancer, was a good friend of Song Hae-rim, who later became Kim Jong-il's third wife and the mother to his first-born son Kim Jong-Nam. Ms Kim Young-soon knew about the relationship in 1969 when it was still a state secret. In 1970, her husband disappeared. One month later, the State Security Department arrested her. She was detained and interrogated in an informal secret detention facility over two months about what she knew about Song Hae-rim. Ms Kim came to understand that officials were afraid of her disclosing information about the relationship between Song Hae-rim and Kim Jong-il. After the interrogation was completed, Ms Kim were detained at Camp No. 15 at Yodok without trial or any explanation, until 1979. Ms Kim's parents and her four children (aged 3, 5, 7 and 10 when they disappeared) were sent to Yodok with her. Both her parents and one of her sons died in the camp. At Political Prison Camp No. 15, Ms Kim met another woman who had been sent to the camp because she had assisted Song Hae-rim in giving birth to Kim Jong-Nam.[1106]

- In 2005, a college professor from Pyongyang and his entire family were sent to Political Prison Camp No. 15 at Yodok. The man had told colleagues that Kim Jong-il had been born in Russia (and not on Mount Paektu, as his official biography claims). He had picked up this information after illegally listening to a short wave radio broadcast produced in the Republic of Korea. The entire family disappeared, except for one daughter, who had already married into another family.[1107]

[1103] TAP012.

[1104] Seoul Public Hearing, 21 August 2013, afternoon.

[1105] TJH007.

[1106] Seoul Public Hearing, 21 August 2013, morning.

[1107] TJH019.

750. Among the camp inmates are also people whose activities threaten to undermine the authorities' policy of isolation from "capitalist" outside influences or the state's monopoly over information. In the past, many prisoners of war and civilians abducted during the Korean War, who refused to be quiet about their past and accept their fate of being denied their right to repatriation, ended up in the prison camps (see below). Many of those ethnic Koreans who returned from Japan in the 1950s and 1960s.[1108] disappeared into political prison camps, because the authorities felt that they might spread subversive information about what they had seen abroad. The same fate was suffered by a large number of young citizens of the DPRK who had studied in Eastern Europe and the Soviet Union around 1989 and witnessed the emergence of democracy in those countries after the fall of the Berlin Wall.

- Mr Kang Chol-hwan's paternal grandparents, moved from Japan to the DPRK in the 1960s to help build the country. In 1977, his grandfather suddenly disappeared. Soon after, Mr Kang (then 9 years old) was arrested and taken, without indictment or trial, to Political Prison Camp No. 15. Only his mother was spared, because she accepted a forced divorce from Mr Kang's father. After having survived ten years of starvation and forced labour in the Camp, he was released without any explanation. Mr Kang described to the Commission that an entire section at Political Prison Camp No. 15 was occupied by ethnic Koreans from Japan who had been detained, apparently because they knew too much about capitalist culture.[1109]
- Mr Ahn Myong-chol, who served as a guard in Political Prison Camp No. 22 at the time, described a large inflow of new prisoners who were arrested in relation to what he termed "*the collapse of the Soviet Bloc*". The prisoners were brought to the camps in train wagons originally designed to transport animals. *"[T]here were like six wagons that were filled with people. And that train came to the camps for six days consecutively, so thousands came in"* Mr Ahn testified.

751. People continue to be sent to political prison camps. Although there has been some reorganization, there is no indication that the system of extra-legal secret political prison camps as such is being phased out. Many among those who disappeared into prison camps in more recent years are persons who fled the DPRK and others who had unauthorized contact with officials or citizens of the Republic of Korea (ROK) or who expressed their Christian religion.

- Mr Jeong Kwang-il was also detained in the revolutionizing zone of Political Prison Camp No. 15 at Yodok from 2000-2003. Coming from a privileged family, he had the opportunity to engage in trading in China. In order to increase the profit margins for his company, he began selling goods directly to buyers from the ROK, instead of going through Chinese intermediaries. When such prohibited contacts were reported by informants to the State Security Department, Mr Jeong was arrested. He was interrogated under torture for six months until he agreed to confess falsely to having engaged in espionage for the ROK. After surviving three years of starvation and forced labour, in Political Prison Camp No. 15, Mr Jeong was released.
- Mr A testified that in 2007, his older sister was sent to Political Prison Camp No. 15 at Yodok after being forcibly repatriated from China. The State Security Department (SSD) considered her case particularly grave, because she had been arrested while trying to reach Mongolia and from there the Republic of Korea. The fact that she had practised Christianity was a further aggravating factor. Being an

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[1108] See also section IV.F.1 f).

[1109] Seoul Public Hearing, 24 August 2013, afternoon.

elderly woman, the sister suffered a stroke when the SSD subjected her to torture. Nevertheless she was sent to the political prison camp without any medical care. "Mr A" fears that his sister must have died in the camp as a consequence of her dire medical condition and the living conditions in the camp.

- One witness described how his son had adopted the Christian religion and repeatedly travelled to China, where he received religious instruction from a Korean-American pastor.[1110] At the end of 2008, the son's contacts with the pastor were discovered, because SSD agents in China had the pastor under surveillance. The son was arrested by the State Security Department. After interrogation, the son was sent to a political prison camp and has not been seen since.
- In July 2009, the witness and three other persons were engaged in an operation to help two elderly citizens from the ROK, prisoners of war from the Korean War, escape the DPRK across the border to China.[1111] The operation was discovered. The witness managed to flee across the border, but the other persons were arrested and eventually sent to Political Prison Camp No. 15 at Yodok.

752. The imprisonment of entire families on the principle of guilt by association has been a defining feature of the DPRK's political prison camps. The principle has been particularly effective in oppressing dissent, because anyone willing to oppose the current political system in the DPRK would have to be prepared not only to sacrifice his or her own life but also that of close family members. Based on its extensive archive of interviews with persons who fled the DPRK, the non-governmental Database Center for Human Rights in North Korea (NKDB) re-construed the reasons for the incarceration of 832 political prison camp inmates. The largest number disappeared to the prison camps for political reasons directly linked to them personally (48.3 per cent). A smaller number of prisoners were held for economic, administrative and ordinary crimes (7.1 per cent) or for having fled to China (8.0 per cent). Yet, more than a third of all inmates (35.7 per cent) were incarcerated for no other reason than an assumed guilt by association.[1112]

753. The Commission finds that, in recent years, there are some indications that fewer people are being sent to political prison camps on grounds of guilt by association.[1113] Nevertheless, there are still instances where families have been sent to prison camps for wrongs committed by a family member. Such collective punishment is often meted out in high-profile cases, where the authorities consider that a particularly harsh reaction is needed to serve as a warning to the general public or to a special segment of society. Even where families are spared prison camps, they often remain subject to harsh official reprisals, including by being removed from their jobs or universities.

- In 2007, the witness escaped from the DPRK. Subsequently, the witness's parents were arrested, interrogated and eventually sent to Camp No. 15, even though they were not involved in the escape of witness. Prior to the escape, the family had already been classified as politically suspect since they were ethnic Koreans who had migrated from Japan.[1114]

[1110] TJH018.

[1111] TJH009.

[1112] NKDB, Political Prison Camps in North Korea Today, p.128.

[1113] One observer has claimed that from the mid- or late-1990s, after Kim Jong-il became Supreme Leader, instructions were given to the security agencies to only send the family of a political wrongdoer to a political prison camp in special circumstances. See Andrei Lankov, *The Real North Korea*, p. 47. See also Andrei Lankov, "How Human Rights in North Korea are gradually improving", *NK News*, 12 September 2013. Available from http://www.nknews.org/2013/09/how-human-rights-in-north-korea-are-gradually-improving/.

- In 2012, the State Security Department carried out a major operation in Hoeryoung (North Hamgyong Province) against a group involved in smuggling mobile phones, cameras and small radios into the DPRK.[1115] The group was falsely framed as planning sabotage activities in the DPRK. State media presented one of the alleged smugglers, Mr Jon Yong-chol, who was seen confessing that he formed a society to destroy statues of Kim Il-sung and Kim Jong-il and indicating that he "could not die" before implicating the Government of the Republic of Korea.[1116] An estimated 90 people, including family members of the suspected smugglers, were arrested and are believed to have been sent to political prison camps. Mr Jon was reportedly executed.
- In the aftermath of the December 2013 execution of Jang Song-thaek, the uncle-in-marriage to Kim Jong-un, allegations have emerged indicating that security officials arrested members of his extended family and transferred them to political prison camps.[1117]

(c) Total control, torture and executions

754. Political prison camp inmates are considered to have lost their rights as DPRK citizens. They are subject to the total control of the camp authorities. As elaborated by former camp guard Ahn Myong-chol:

> "*In the kwanliso, the inmates are no longer registered citizens, so you do not need a law to decide the sentences. The* bowibu *[SSD] agent is the person who decides whether you are saved or you are executed. There are no other criteria other than his words. [The inmates] are already eliminated from society.*"[1118]

755. The Commission finds that the majority of prisoners who remain in the camps have no prospect of ever being released. They are held in total control zones and are incarcerated until they die. Only prisoners held for relatively minor wrongs who are kept in the revolutionizing zone of Political Prison Camp No. 15 could hope to be reinstated as citizens and achieve their release after a number of years in the prison camp. It is uncertain whether this remains the case. Since 2007, there are no known cases of people being released from Political Prison Camp No. 15. Some observers therefore fear that the entire Political Prison Camp No. 15 has been turned into a total control zone to preclude the possibility of further witnesses emerging from the prison camp.[1119]

756. The physical set-up of the camps makes escape virtually impossible. The camps are surrounded by high perimeter fences that are electrified at a deadly voltage and further secured by barbed wire. Pit traps and minefields are also placed around the perimeter fence. Each camp is surrounded by numerous guard posts and checkpoints, manned by guards armed with automatic rifles. Inmates are subject to strict movement restrictions within the

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[1114] TJH019.

[1115] TLC004.

[1116] See "Arrested Terrorist Interviewed", *KCNA*,19 July 2012. Available from http://www.kcna.co.jp/item/2012/201207/news19/20120719-08ee.html. Footage of Mr Jon's alleged confession, produced by KCNA, is available from http://www.youtube.com/watch?v=PI2g-h2zMyM.

[1117] See also "Jang's Family Hit with Prison Camp Transfer", *Daily NK*, 20 December 2013. Available from http://www.dailynk.com/english/read.php?num=11296&cataId=nk01500.

[1118] Seoul Public Hearing, 21 August 2013, afternoon (00:58:40).

[1119] See Mr David Hawk, Washington Public Hearing, 31 October 2013, afternoon.

camp. They are under strict orders to stay clear of the perimeter fence unless authorized to approach it by the guards.

- Mr Shin Dong-hyuk, the only person known to have successfully escaped a total control zone, owes his escape to a tragic coincidence. As nightfall approached on the day of his escape, a friend and he were assigned to collect firewood in the vicinity of the perimeter fence. They decided to seize the opportunity to escape. His friend reached the fence first and was electrocuted as he attempted to climb through a hole in the fence. Dangling on the wire, the friend's body created a sufficiently insulated breach for Mr Shin to climb through and run away. Mr Shin explained the motivation underlying his risky decision:

  "I heard from this new inmate, that the people outside could eat the same food as the guards, freely. I could have been electrocuted, I could have been shot but I just wanted to have one day for which I could eat all the food that the people outside [the camp] ate."[1120]

757. Camp guards are under firm orders to shoot to kill anyone trying to escape and they are rewarded if they do. Guards and prisoners are also instructed that any attempt to escape will be punished by immediate summary execution. This rule is systematically implemented. Summary executions for attempted escape can be based on vague indicators like the inmate separating from his assigned group or approaching the perimeter fence without authorization.

- Mr Ahn Myong-chol testified that a fellow guard killed five prisoners and then, in an attempt to be rewarded, he falsely reported that they had tried to escape. When an investigation discovered the man's action, he was transferred to another camp, but not severely punished "*in order to maintain high spirits [among the guards] within the camp.*"[1121]

- Mr Jeong Kwang-il described two executions linked to a suspected escape attempt. In August 2001, a male inmate had left his group to look for food because he was so hungry. He then went into hiding, because leaving one's group is considered an escape attempt, which is punishable by death. When the guards found him after three days, they publicly executed him.

- In March 2003, another man left his work unit to take some potatoes from the storage, because he was extremely hungry. Fearing that the guards would try to consider this an attempted escape, he tried to hide. The guards chased tracker dogs after him. The dogs found and mauled the man until he was half dead. Then the guards shot the victim dead on the spot. [1122]

758. The Commission finds that summary executions and other cruel extrajudicial punishments are meted out for violations of the camps' strict rules, disobedience of orders or any other conduct considered worth punishing. The punishment process is entirely in the hands of a special investigation unit of SSD agents. Even a decision to impose the death penalty is not subject to appeal or judicial review of any kind. Before a "sentence" is pronounced, the victim is often subject to lengthy interrogation under torture conducted by the SSD investigation unit in the camp.

759. Executions are generally carried out in front of all inmates to provide a warning for the rest of the inmates. Even family members of the victims and children of all ages are

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[1120] Seoul Public Hearing, 20 August 2013, afternoon (01:11:40).

[1121] Seoul Public Hearing, 21 August 2013, afternoon (00:14:35).

[1122] Seoul Public Hearing, 21 August 2013, morning.

usually forced to attend. An SSD agent usually pronounces the reasons for the executions, before a firing squad, normally composed of regular camp guards, carries out the execution.

760. Other types of punishment can take a wide variety of forms ranging from ration cuts and additional forced labour to solitary confinement, beatings and mutilation. Physical punishments are usually carried out in special punishment blocks, which are also used for the interrogation of prisoners under torture. At times, individual guards will also impose torture and cruel, inhuman and degrading punishments on the spot without any formal investigatory process. Children are not spared from even the cruelest punishments.

- When he was 14 years old, Mr Shin Dong-hyuk was interrogated under torture for six months in the punishment block of Political Prison Camp No. 14 to establish whether he knew about escape plans discussed between his mother and brother. Among other methods, he was strung over a lit fire until his back was burned. He survived only because of the help of an older cellmate who nursed his injuries.[1123]

  On another occasion, Mr Shin accidentally dropped a sewing machine at the factory he was forced to work at. The middle finger of his right hand was cut off as punishment:

  "The guard told the floor manager to cut off my finger, so got on my knees and I begged not to do so but that didn't work obviously. And, I thought my whole hand was going to cut off, but it was just a finger. So, at that time I was grateful, really grateful to the guard because I was only losing a finger instead of a hand."[1124]

- Mr Ahn Myong-chol recalled an incident in Political Prison Camp No. 22, when his superior officer used a blowtorch to bludgeon a sick prisoner to death, because the man had not worked fast enough. After an investigation of the incident, the officer was not punished but rewarded with the right to attend university.[1125]

- Mr Kang Chol-hwan indicated that the "sweatbox" was used to punish prisoners in Political Prison Camp No. 15 at Yodok. Located near the guards barracks at the main entrance, the "sweatbox" was a wooden box so small that a person could not fully stand up or lie down within it. The prisoner is forced to kneel in a crouched position. The prisoner's rear end pressed into the heels constantly until the buttocks were solid black with bruising. This cuts off the circulation so that, if left in the sweatbox long enough, a prisoner will die. Moreover, prisoners in the sweatbox were given almost no food. They often survived only by eating insects that crawl into the box.[1126]

- According to one witness, who was detained in the revolutionizing zone of Political Prison Camp No. 15, anyone who was reported to have criticized the camp authorities was taken away into the punishment block. Many never returned and may have been sent to the total control zone for life imprisonment. Those who made it back were in a terrible physical and psychological condition. The witness remembers one inmate who returned from the punishment block in such a pitiful state of health that he could not fulfil his work quota. The guards beat him so savagely that he died two days later.[1127]

[1123] Seoul Public Hearing, 20 August 2013, afternoon.

[1124] Seoul Public Hearing, 20 August 2013, afternoon (00:57:50).

[1125] Seoul Public Hearing, 21 August 2013, afternoon.

[1126] Kang Chol-hwan, *The Aquariums of Pyongyang*, pp. 95-96. The contents of the book were authenticated by Mr Kang in the Seoul Public Hearing, 24 August 2013, afternoon.

[1127] TLC008.

761. Guards are taught that inmates are enemies of the people and must be approached with hostility. They also realize that individual cruelties towards inmates will generally not result in any punishment.

- Describing his training, Mr Ahn Myong-chol indicated that "*we had very intensive ideology training for six months, and that training is to… I guess invoke hostility against the inmates and to imprint in our minds that the inmates are enemies.*"[1128] He also described how he and other guards sometimes felt sympathy for the prisoners, but could never show it, because such signs of sympathy would have resulted in punishment of the guard concerned.
- The intensive ideology training that guard recruits like Mr Ahn received aimed at invoking hostility against the inmates and imprinting in their minds that the inmates are enemies. In order to reemphasize this point, he and other guards were made to use prisoners as 'human punching bags' during their martial arts training:

  "*Sometimes the instructors would summon inmates who were working in the field. They were summoned so that we could practise our [martial arts] skills on them. The reason for actually practising our skills on these inmates was to … make these inmates stay on alert and to instruct us that those are our enemies. … We did not have people to practise on, so they summoned the inmates so that we could practise our kicks and hits on them… We really don't care if we are going to kill them or let them live.*"[1129]

  Mr Ahn also spoke about how ferocious dogs were kept in one the camps to catch inmates who attempted to escape. On one occasion, the dogs mauled and killed three children at a school for child inmates. The commanding officer initially berated the dog trainer for letting the dogs loose. Later, however, he praised the trainer in front of the other guards for having trained dogs that could effectively kill political prisoners.
- Ms Kim Hye-sook endured her most humiliating moments in Political Prison Camp No. 18 when some of the guards randomly stopped her and ordered her to kneel down and open her mouth. The guards spat in her mouth and tell her to swallow it. If she had shown any sign of disgust she knew that she would have been severely beaten.[1130]

762. The Commission finds that, in addition to its guards, the political prison camps employ selected prisoners to control and monitor other prisoners. Prisoners are organized into work units. The prisoners appointed to head these units are responsible for enforcing discipline and, to do so, they may use violence at their own discretion. In addition, the camp administration runs a system of informants who cooperate in the hope of receiving larger food rations or more lenient treatment from the guards. Individual prisoners are instructed that failure to report any perceived wrongdoing of other inmates could result in severe punishment. From their first moments in the camp, this principle is also instilled in child inmates, who are even expected to denounce their own parents.

- Mr Shin Dong-hyuk was 13 years old when he reported a conversation he overheard between his mother and brother in which they talked about escaping from the camp. As a result, his mother and brother were both executed. Mr Shin had to watch the public execution of his mother and his brother, along with all other inmates. Mr

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[1128] Seoul Public Hearing, 21 August 2013, afternoon (01:09:47).

[1129] Seoul Public Hearing, 21 August 2013, afternoon (00:10:40).

[1130] Confidential interview by video-conference.

Shin described the thought process leading to him denouncing his own mother as follows:

> *"I first reported about their plan [to escape], because I was obliged to report every detail to the guards... That was the rule of the prison's camp, so that's why obviously I thought it was my job to report about their plan to the guard at that time. At my age, I was really proud of that. ... I asked the supervisor to reward me, to give full portion of cooked, dried rice so fill my stomach. And, I was promised that reward and that's why I reported about their plan."*[1131]

(d) Sexual violence and denial of family and reproductive rights

763. Although policies appear to vary between camps, families sent to the camps on the basis of guilt by association are often allowed to stay together. The Commission finds, however, that inmates of the existing prison camps are generally not allowed to form new families or have children.[1132] This policy is consistent with the stated objective of eliminating the seed of class enemies. Only on rare occasions do the camp authorities arrange "marriages" between model prisoners who distinguished themselves through hard work and absolute obedience. The prisoners selected have no say in the choice of partner. "Married" couples are not allowed to live together, but are brought together for several nights per year for the purpose of intimate contact. In some cases, this results in the birth of children. Children born from such relations themselves become prisoners.

764. Women who are not in authorized relationships and become pregnant are subjected to forced abortion and additional punishment, including execution or torture.

- Mr Shin Dong-hyuk's parents were designated by the guards to "marry" each other since they had been model prisoners of Camp No. 14. Mr Shin lived alone with his mother until age 11 but then had to move into separate barracks. His father lived separately within the camp, seeing him rarely. Mr Shin felt there was no concept of family in the camp:

  > *"We were all inmates and there was nothing that I could do to them ... And, they had nothing they can do as parents, so I guess I did not feel any attachment or feeling for my parents."*[1133]

- Mr Ahn Myong-chol indicated that Kim Il-sung had instructed that three generations of inmates should be annihilated. This is why pregnancies were strictly forbidden: He elaborated that "*the camp is there in order to make sure that there are no future generations of the political prisoners.*" The camp authorities sometimes allowed marriages to motivate the workers. However, if an unmarried woman gave birth to the child of another inmate, harsh punishment inevitably followed:

  > *"[I]f the father is an inmate, the guy would be shot to death and the woman will be sent to the harshest coal mines to work."*[1134]

- A former political prisoner, who was detained from 2007 to 2010 in the revolutionizing zone of Political Prison Camp No. 15 at Yodok, witnessed two cases, in which women who became pregnant without authorization were forced to have an abortion. The victim's term of imprisonment at Yodok was also extended.

[1131] Seoul Public Hearing, 20 August 2013, afternoon (00:41:00).

[1132] Camp 18, which was run by the Ministry of People's Security, marked an exception to this practice. In that camp, prisoners of a certain age (30 years for men, 28 years for women) were allowed to choose a partner and marry, provided that they had a good record of work and obedience.

[1133] Seoul Public Hearing, 20 August 2013, afternoon (00:46:36).

[1134] Seoul Public Hearing, 21 August 2013, afternoon (00:31:45).

One of the cases was a late term abortion, carried out through an injection that induced premature labour. The witness herself was forced to help the victim deliver the dead foetus.[1135]

- The witness was sent to Political Prison Camp No. 18 whilst pregnant. Towards the end of her pregnancy, she was kicked by a guard triggering premature labour. When the child was born, guards beat her until they could pull away the crying baby from her. She lost consciousness because of her ordeal. When she woke up she found her baby dead. The body was gathered with other corpses in a storeroom until enough corpses had accumulated to merit throwing them into a single grave site. Still in pain and bleeding, the witness was forced to work the next day and beaten because she could not keep up with her work quota.[1136]

765. The Commission finds that the conditions of subjugation of inmates, coupled with the general climate of impunity, creates an environment, in which rape perpetrated by guards and prisoners in privileged positions is common. In some cases, female inmates are raped using physical force. In other cases, women are pressed into sexual relations to avoid harsh labour assignments, or to receive additional food.[1137] Such cases generally amount to rape as well, because they are not consensual as the perpetrators take advantage of the coercive advantages of the camp environment.[1138]

766. Unlike other types of torture, rape as such is not condoned by camp rules. Instead, SSD agents and guards are under strict orders not to fraternize with the inmates and in particular not to have any sexual engagement with them. However, if cases of rape come to light, the perpetrator often escapes with a mere dismissal or no punishment at all. The victim, however, is frequently reassigned to harsh labour or secretly executed, especially if she becomes pregnant.[1139] Without exception, pregnant victims are subject to abortion or their child is killed at birth.

- Mr Ahn Myong-chol gave testimony that, unlike ordinary guards, higher-ranking SSD agents could get away with sexually abusing female inmates, as long as the women did not become pregnant. In cases of pregnancy, the official was dismissed and the women sent to harsh mining work or secretly executed. On one occasion, the commander of his unit raped a woman, who became pregnant and gave birth to a baby. The mother and her child were taken to the detention and punishment block, where the baby was thrown in the feeding bowl for the dogs.

  Mr Ahn Myong-Chol also recalled the case of a young girl, who was sent to the torture and punishment block in Camp No. 22 after she was raped by a guard. She was tortured by pressing a burning hot stove hook on her breast. Subsequently, she was reassigned to harsh labour in the coal mine, where she lost both legs in an accident.

[1135] TLC018.

[1136] TSH019.

[1137] NKDB, *Political Prison Camps in North Korea Today*, p. 492.

[1138] Taking advantage of coercive circumstances as a type of coercion giving raise to rape has been recognized inter alia by the jurisprudence of the ICTY Appeals Chamber and the official interpretation of rape under the ICC Statute. See Kunarac, Kovac, and Vokovic, IT-96-23& IT-96-23/1-A [ICTY Appeals Chamber], Judgment of 12 June 2002, para. 129 [finding that the lack of consent on the part of victim characteristic of rape also exists where the perpetrator is "taking advantage of coercive circumstances without relying on physical force"]. See also Elements of Crime, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, Sept. 3–10, 2002, article 7(1)(g)-1, article 8(2)(b)(xxii)-1, article 8(2)(e)(vi)-1.

[1139] NKDB, *Political Prison Camps in North Korea Today*, pp. 487-88.

Mr Ahn further testified that some of the guards played sadistic and sexually abusive games with the hungry prisoners. On one occasion, an SSD agent at Political Prison Camp No. 22 sat on a chair and used a fishing rod, baited with pork fat to entice a nude female prisoner to crawl like a dog and jump after the meat. The SSD officer took obvious pleasure in this game, pulling up the fishing rod just high enough to keep the prisoner from catching the meat and lowering it again to give her another chance.[1140]

- Ms Kim Hye-sook described how the women who worked in the mines of Political Prison Camp No. 18 feared assignment to the nightshift, because guards and prisoners preyed on them on their way to and from work and rape them. None of the victims talked about their experience openly for fear of being punished. However, a number of female prisoners recounted their traumatic experiences to her in confidence.[1141] Another witness reported that the guards of Camp No. 18 were especially targeting teenage girls.[1142]
- A former guard in Camp No. 11 described how the camp authorities made female inmates available for sexual abuse to a very senior official who regularly visited the camp. After the official raped the women, the victims were killed.[1143]

(e) Starvation, forced labour and diseases

767. Except for the minority of prisoners kept in the revolutionizing zone of Political Prison Camp No. 15, camp prisoners are considered ideologically irredeemable. They have no prospect of securing release. Instead, they are subject to gradual extermination through starvation and slave labour in harsh conditions, with the apparent intent to extract a maximum of economic benefit at a minimum of cost. Former political prison camp guard Mr Ahn Myong-chol explained:

> *"Inmates in the [political prison camps] are not treated like human beings. They are never meant to be released...] their record is permanently erased. They are supposed to die in the camp from hard labour. And we were trained to think that those inmates are enemies. So we didn't perceive them as human beings."*[1144]

768. Former inmate Mr Shin Dong-hyuk came to the same conclusion. In his testimony before the Commission, he said:

> *"[T]he dictators in North Korea thought that we should die, we were not worth living, they were just extending our lives, and they just let us live so that we would produce for them and we could die in the process working."*[1145]

769. Inmates of political prison camps experience unspeakable atrocities and hardships. However, the feature that former inmates emphasized as most painful most was their severe hunger and their daily struggle against starving to death.[1146] Inmates are provided with rations that are so insufficient in quantity, quality and diversity that any prisoner who solely relies on the ration would quickly starves to death. The starvation diet gives the emaciated political prisoners a distinctly skeletal physical appearance. Every year, large numbers of

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[1140] Seoul Public Hearing, 21 August 2013, afternoon. The last two incidents were described by Mr Ahn in a follow-up interview conducted by the Commission after the public hearing. Mr Ahn provides the same testimony in NKDB, Political Prison Camps in North Korea Today, pp. 236, 289.

[1141] Confidential interview with Ms Kim Hye-sook.

[1142] TSH029.

[1143] TJH041.

[1144] Seoul Public Hearing, 21 August 2013, afternoon (00:16:40).

[1145] Seoul Public Hearing, 20 August 2013, afternoon (01:39:05).

[1146] For more details on the starvation of prisoners, see also section IV.D.9.

prisoners die from starvation or nutritional deficiency diseases like pellagra, which is characterized by skin eruptions, breakdown of the mental and digestive system and mental deterioration. Prisoners are only be able to survive over longer periods of time by hunting and gathering insects, rodents and wild plants or finding ways to divert food meant for the guards and farm animals.

770. The Commission finds that the starvation of prisoners is based on deliberate policy, rather than being a mere reflection of the overall situation of food insecurity prevailing in the DPRK. It has been a constant feature of the camps that existed even when the overall food situation in the DPRK was more stable. Former guards and other security officials interviewed by the Commission indicated that starvation was a deliberate measure to keep prisoners weak and easy to control and to augment their suffering.

- Ms Kim Young-soon described how her family was only provided with corn and salt, when they were incarcerated at Political Prison Camp No. 15 at Yodok in the 1970s. Her father starved to death. Kim Young-soon said she always ran to her work because if she was late her food rations were cut. Even if she had broken bones she still needed to run to her work to avoid having her rations cut. Their rations were so little of it that the families hunted snakes and rodents to secure the survival of their young children. Ms Kim recalled:

  "[The] babies [had] bloated stomachs. [We] cooked snakes and mice to feed these babies and if there was a day that we were able to have a mouse, this was a special diet for us. We had to eat everything alive, every type of meat that we could find; anything that flew, that crawled on the ground. Any grass that grew in the field, we had to eat. That's the reality of the prison camp."[1147]

- Mr Kang Chol-hwan testified that, during his ten years at Political Prison Camp No. 15, he buried the bodies of more than 300 people who had died of starvation or malnutrition. Food rations were provided once a month and usually consisted of corn kernels that lasted no longer than half the month, even though the food situation in the remainder of the DPRK was good at the time of his incarceration in the 1980s.

  "At that time, the economic situation was pretty stable, so I think the food [situation in the country] was okay. But for political criminals, they gave us a fistful of corn kernels once a month... after 15 days, we would run out of food, so we had to cut grass to cook porridge, to stay alive. Even fit men, healthy people, after three months, would suffer from malnutrition. In order to overcome malnutrition, we ate things like mice, snakes, frogs, worms, anything that came into our sight, in order to get protein. ...The first three months after you enter the prison camp, those three months are critical. ... I developed malnutrition in those three months and I came very close to dying. But kids who were there before me, they caught mice in the field for me and they saved me. ... The elites, the intellectuals, the people who used to be in higher positions, they are the first ones to die because they don't dare to eat [mice and rats]. But those who had a difficult life outside the camp, and kids, who leaned to their instincts, they had higher survival rates."[1148]

- Mr Shin Dong-hyuk, born in 1982 in Camp No. 14, testified that he was always hungry during his detention, because there was never enough food. Although camp inmates raised animals and also farmed rice, they were not given permission to eat this food and only had access to the meagre rations allotted to them. Mr Shin recalls that he was given only 400 grams of corn porridge per day, so that to survive he had to find other sources of food such as grass and mice.[1149]

[1147] Seoul Public Hearing, 21 August 2013, morning (00:31:50).

[1148] Seoul Public Hearing, 24 August 2013, afternoon (03:31:30).

- Even before the famine of the 1990s, Ms Kim Hye-sook's family of seven only received 4.5 kilograms of dried corn per month, so that they had to augment their diet to survive Political Prison Camp No. 18.[1150] During the famine, food rations were further cut down to a point where only adults engaged in full time forced labour would receive rations. Her grandmother died from starvation and her exhausted mother fell from a steep cliff as she tried to forage for edible wild plants.

- Mr Jeong Kwang-il and Mr Kim Eun-chol, detained from 2003 in Camp No. 15, said that prisoners were only given 120 grams of corn porridge three times a day. On special days, they received a piece of pork in their soup. Rations were halved if workers did not perform well.[1151]

771. As a matter of camp policy, the food rations of disobedient prisoners are cut to a level where death by starvation results in a short period of time. Former prisoners interviewed by the Commission attested to the fact that rations in the prison camps were frequently halved as a punishment for not working well, for being too unwell or injured to work or as a punishment for not following the rules of the camp. Former officials indicated that such ration cuts were meticulously outlined in the written instructions that the guards received as part of their training.

772. Where prisoners are caught circumventing the starvation rations, for example, by taking leftover food from the guards' entitlements, animal feed or food produced in the camp, this can result in extremely harsh punishment, including summary execution.

- Mr Shin Dong-hyuk described how a girl of around 7 years of age had slipped a few grains into her pocket. A guard caught her and beat her so badly with a wooden stick that she died from her injuries:

  "[A]bout twice a week, [the guards] would choose one kid and do the inspection to see if this person is stealing something or hiding something, but she was so unlucky that she was chosen as the kid to be inspected. And, in her pocket there were some grains and then the guard asked where she got it. Then, she told the guard that she picked them up on the street. There was a wooden stick that the guards used. And, the guard says that's not the way I taught you, so you went against my teaching. So, she was beaten so badly that she fainted, and we had to take her to her mom. When she didn't come to school the next day, we learned that she had died."[1152]

  Mr Shin also described how inmates had to eat grass or food crumbs that had fallen on the floor clandestinely so that the guards would not see them:

  "We had to make sure that the guards did not look at us when we did that. And sometimes we had to ask the guards if we were allowed to eat he crumbs that had fallen on the floor. There were lots of mice, lots and lots of them ... the inmates would rush towards them, catch them, but if we saw any of the guards present, the best performing worker among us would ask the guard if we could catch and eat one of the mice. And, sometimes if the guard was in a good mood, he would give permission, but sometimes he would not give us permission to catch the mice. ...

[1149] Seoul Public Hearing, 20 August 2013, afternoon.

[1150] Confidential interview.

[1151] Seoul Public Hearing, 21 August 2013, morning.

[1152] Seoul Public Hearing, 20 August 2013, afternoon (00:30:29).

Sometimes, when we caught mice without the knowledge of the guard we would hide it in our pants."

- Mr Kim Eun-chol recalled how a fellow inmate at Political Prison Camp No. 15 was executed in front of the other inmates, because he had stolen potatoes from one of the fields.

  Mr Kim also testified that people caught stealing leftover food were subject to solitary confinement and extreme starvation rations in the punishment block of Political Prison Camp No. 15 at Yodok. Mr Kim elaborated on the experience of solitary confinement:

  "Once you are in there, not a lot of people make it out. Once you are in the solitary cell, you are beaten up and they give you 30 grams per meal and you get cold, so that leads to an immediate weakness. Somebody who weighs 50 kilograms [when they go in], their weight is reduced to 20 kilograms [when they exit solitary confinement]."[1153]

- The witness, who was detained at Political Prison Camp No. 18, picked through cow dung to find undigested grains. When a guard caught her, he kicked her in the head. She suffered a gashing wound and lost several teeth. The witness also described how a fellow prisoner was beaten to death when he tried to hide stolen corn in his mouth. When another inmate tried to pry open the corpse's mouth to take the corn, he was also savagely beaten.[1154]

773. The Commission finds that, in addition to enduring deliberate starvation, inmates are also deprived of other basic needs of survival. Even though temperatures can reach minus 20 degrees Celsius in winter, they are housed in huts or basic barracks that often lack window panes and effective heating. Blankets, soap, sanitary pads for women and other hygiene items as well as cooking utensils are provided infrequently or not at all.

774. The camps offer only the most rudimentary health care facilities, which lack medical supplies and qualified personnel and offer the seriously ill little more than a place to die. The prevailing lack of hygiene and medical care facilities the outbreak of epidemic diseases that kill large numbers of the starving and exhausted prisoners.

- Mr Ahn Myong-chol described how an epidemic broke out and killed 200 prisoners in one camp because hungry prisoners were catching and eating a type of rat that carried the disease. A lot of deaths also occurred in winter and early spring (when the cold was the harshest and food stocks were depleted).[1155]

- Mr Shin Dong-hyuk endured freezing winters in a small house that had one window opening without glass: "There were a lot of winds gusting in, and I remember being really cold in the winter times."[1156]

- Mr K described that the prisoners of Camp 11 were living in straw thatched mud shacks that were dug into the ground and placed right next to the pigsties of the camp.[1157]

- Ms Kim Hye-sook had two children in the camp without receiving any pre-natal or other medical care in relation to her pregnancies. She was alone in the mountains foraging for edible herbs, when she gave birth to her first child and had to drag herself back to her living area, covering the new-born baby with clothing rags and leaves.[1158]

[1153] Seoul Public Hearing, 21 August 2013, morning (01:48:10).

[1154] TSH029.

[1155] Seoul Public Hearing, 21 August 2013, afternoon.

[1156] Seoul Public Hearing, 20 August 2013, afternoon (00:34:50).

[1157] Tokyo Public Hearing, 30 August 2013, afternoon.

- According to a former inmate, Political Prison Camp No. 18 lacked medicine and doctors. Prisoners who were seriously ill were gathered in a special "work unit" and just left to die. When prisoners died, they were not buried right away. The dead bodies were stored in a warehouse until there were enough bodies for a mass burial. Rats often gnawed the flesh off these bodies.[1159]

775. The political prison camps run their own factories, farms, mines and logging operations, producing among other things, coal, clothing for the military and consumer goods. They also produce more food than is being used by the inmates. In particular, high quality foods such as meat are reserved for the guards or sale. Roads and train connection ensure that the goods produced reach the general economy. The production facilities are administered to generate a maximum of economic output at minimal cost, without proper regard for the well-being and survival of the inmates. All inmates are subjected to forced labour. They generally work 12 hours or more every day of the week, even if they are very sick. They are only exempted from forced labour (or have to perform only reduced shifts) on important public holidays and days reserved for maintenance activities.

776. The assignments most feared by inmates are in the mines and logging sites that are located on the premises of some of the camps. There, inmates have to toil with only basic tools in particularly dangerous conditions. Deadly work accidents frequently occur as a result of the combination of the prisoners' dire physical condition and the lack of safety measures.

777. Prisoners are subject to beatings, extended hours and food ration cuts, if they do not fulfil their assigned daily work quota. Very often, an entire work unit of prisoners is collectively punished. This gives the work unit leaders among the prisoners a strong incentive to drive fellow prisoners to the point of complete exhaustion. They often beat those fellow prisoners who lag behind.

778. In the revolutionizing zone of Political Prison Camp No. 15, elderly prisoners no longer have to work, but receive only reduced food rations. However, in the total control zone prisoners apparently have to work until they die.

779. From the age of five, children are forced to engage in forced labour such as farming or cleaning. In addition, they receive a few hours of rudimentary education that is provided by SSD agents. From age 15 or 16, children work full-time the forced labour system and are not spared from even the most backbreaking assignments such as mining.

- Born as a prisoner of Camp No. 14, Mr Shin Dong-hyuk described how children received only very little education while spending most of their time farming or doing other chores. He felt that the camp authorities "*were thinking that we were same as [ploughing] animals that's why they felt that they didn't need to teach us anything*".[1160] At age 15, he was assigned to help build a hydropower dam on the Taedong River. On one occasion, three adults and five children were crushed by a falling concrete wall. The work crew had to continue working and could only dispose of the bodies at the end of the shift. From age 16, Mr Shin had the fortune to be assigned to work in a pigsty, a much coveted position because of the possibility of access to clandestinely obtain animal feed.[1161]

[1158] Confidential interview.

[1159] TSH029.

[1160] Seoul Public Hearing, 20 August 2013, afternoon (01:39:50).

- Mr K found small sickles used in farming as he dismantled Political Prison Camp No. 11. He was shocked and saddened to hear from the SSD agents remaining on the site that these tools were used by children as young as 5 years who were forced to work in the fields, while only receiving a bare minimum of education.[1162]
- Ms Kim Hye-sook had to work in a coal mine at Political Prison Camp No. 18 from age 15. Although there was nominally a system of three shifts, they ended up having to work 16-18 hours a day to maximize output. The men dug up the coal with picks and shovels. The women then had to manually transport the coal to the surface using sacks, buckets or coal trolleys. Both her husband and her brother died in mining accidents. Like many others forced to work in the mines, Ms Kim still suffers from black lung disease.[1163]
- Another witness, who had to work in the same mine, said that every prisoner had to dig up or carry a quota of one ton of coal per day. Some people ended up working 20 hours until they filled their quota. The witness estimated that 200 people died every year in that mine alone. [1164]

(f) Deaths in custody and lack of respect for the dignity of the dead

780. Political prisoners are considered to have been erased from the citizenry. If they die their bodies are never returned to the family outside the camp, but are disposed of with no respect for cultural tradition and the dignity of the dead. If they have family outside the camp, they will generally receive no notification about the death.

- Mr Ahn Myong-chol explained that there is no designated burial spot for inmates or a Korean-style tomb. Instead, they were simply placed in shallow holes in collective burial sites:

> *"They sometimes buried bodies over other bodies. As we are digging the ground and we sometimes found the bones, and so if there is a [prison] mine, then surrounding hills, and mountains would be something like a cemetery. There is no actual cemetery for political prisoners..."*[1165]

- Mr Kang Chol-hwan remembered that he buried over 300 bodies during his 10 years in Political Prison Camp No. 15 at Yodok.[1166] Inmates assigned to bury the bodies stripped them of their clothes so as reuse or barter them.[1167] Eventually, the camp authorities simply bulldozed the hill used for burials to turn it into a corn field:

> *"As the machines tore up the soil, scraps of human flesh reemerged from the final resting place; arms and legs and feet, some still some still stockinged, rolled in waves before the bulldozer. I was terrified. One of friends vomited.*

[1161] Blaine Harden with Shin Dong-hyuk, *Escape from Camp No. 14* (New York, Penguin Books, 2012), p. 77.

[1162] Tokyo Public Hearing, 30 August 2013, afternoon.

[1163] Confidential interivew.

[1164] TAP012.

[1165] Seoul Public Hearing, 21 August 2013, afternoon (01:18:00).

[1166] Seoul Public Hearing, 24 August 2013, afternoon.

[1167] Kang Chol-hwan, *The Aquariums of Pyongyang*, p. 101.

> *…. The guards then hollowed out a ditch and ordered a few detainees to toss in all the corpses and body parts that were visible on the surface.*"[1168]

781. Former prisoners and guards interviewed by the Commission all concurred that death was an ever present feature of camp life. In light of the overall secrecy surrounding the camp, it is very difficult to estimate how many camp inmates have been executed, were worked to death or died from starvation and epidemics. However, based on the little the outside world knows about the horrors of the prison camps, even a conservative estimate leads the Commission to find that hundreds of thousands of people have perished in the prison camps since their establishment more than 55 years ago. [1169]

4. Gross violations in the ordinary prison system

782. In addition to the political prison camps operated by the SSD, the DPRK maintains an extensive system of ordinary prisons. The existence of these prisons is acknowledged and they have a legal basis in the Criminal Code.[1170]

783. Ordinary prisons are for the most part operated by the Prisons Bureau of the Ministry of People's Security. They are subject to the oversight of the Office of the Prosecutor. Perpetrators of more serious crimes are sentenced to imprisonment in ordinary prison camps (called *kyohwaso*, which literally translates to "Reform and Edification Centre"). Less serious crimes are supposed to be punished through imprisonment of a few months to two years in "labour training camps" (*rodongdanryundae*). In addition, there are various types of detention and closed facilities for juvenile offenders and street children.[1171]

784. According to information provided by the DPRK to the United Nations Human Rights Committee in 2001, there were three prison facilities, which housed 1,153 inmates at the end of 1998, 3,049 at the end of 1999 and 1,426 at the end of 2000.[1172] In 2005, the DPRK reported to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) that in March 2005, only 40 women were imprisoned in reform institutions following conviction.[1173]

[1168] Kang Chol-hwan, *The Aquariums of Pyongyang*, p. 102.

[1169] Considering the particularly dismal living conditions in the political prison camps and also taken into account the death rates of sometimes 20 per cent or more reported from ordinary prison camps (see below, section VI.D.4.a) , it can be conservatively assumed that the average annual death rate among political prison camp inmates is at least 10 per cent. This would be a death rate ten times higher than the crude death rate for the general population in the DPRK. According to the latest figures available to the World Health Organization, this mortality rate stands at 1 per cent (10 per 1000 persons). See World Health Organization, "South Eastern Asia Region: Democratic People's Republic of Korea statistics summary (2002 - present)". Available from http://apps.who.int/gho/data/view.country.7400). If this estimated annual death rate of 10 per cent is applied to the reported estimates of 105,000 prisoners for the period of 1982-1990 and 150,000 for the period 1991-2005 and 100,000 for the period 2006-2013, the estimated number of deaths would be 395,500 for the last 31 years alone. This figure corresponds with the estimate of at least 400,000 dead over the course of three decades, which has been put forward by the Committee for Human Rights in North Korea (HRNK). See HRNK, "Founding Document". Available from http://www.hrnk.org/publications/founding-document.php.

[1170] Only the usage of police holding centres (*jipkyulso*) as places of punishment has no apparent basis in the Criminal Code.

[1171] See section IV.C.

[1172] CCPR/C/SR.1944, para. 26.

[1173] Responses of the Democratic People's Republic of Korea to the list of issues and questions for consideration of the initial report, Committee on the Elimination of Discrimination Against Women (CEDAW) Working Group 33rd session, CEDAW/PSWG/2005/II/CRP.2/add.3, p. 8.

785. On the basis of testimony and other information received, the Commission finds that these numbers are grossly understated and do not constitute a complete description of the prison system. Information gathered about the number of different prisons in existence and reported inmate figures for some of the facilities, suggest that the number of inmates in the ordinary prison system could be 70,000 or more.[1174]

786. The DPRK contends that its prisons are reform institutions that provide reform of prisoners through labour.[1175] It also stated that in strict application of relevant regulations, its prisons are equipped with bedrooms, bathrooms, dining-rooms, workshops, education rooms, libraries, infirmaries and other facilities, as well as with natural and electric lighting, ventilation and heating. The inmates were provided with meals, drinking water, clothing, bedding and health care. Doctors checked their physical condition and provided appropriate medical treatment free of charge. Reform institution officials received special training and were prohibited from torturing or insulting inmates. There was an eight-hour working day and inmates were paid according to the quantity and quality of their work. They had access to books, magazines and newspapers, could watch films and television, listen to the radio, play games, engage in sport and could receive visits from and correspond with their family.[1176] The DPRK also insists that female inmates are assigned appropriate light labour according to their physiological state.[1177]

787. To a certain degree, the model prisons occasionally shown to outside visitors may live up to these standards. However, testimony the Commission gathered from dozens of former inmates and former officials who have seen other prisons first-hand leads the Commission to find that the vast majority of prisoners experience a very different reality. Patterns of deliberate starvation, forced labour, inhumane living conditions, torture and summary executions exist that are in many respects similar to the patterns existing in political prison camps, although the level of violations is less intense.

(a) Ordinary prison camps (*kyohwaso*)

788. Many inmates of the ordinary prisons camps (*kyohwaso*) are perpetrators of common crimes, including violent and economic crimes. Sentences can involve disproportionally long terms of imprisonment for relatively minor offences. However, the harsh sentencing practice is to some degree offset by partial amnesties decreed on politically important anniversaries. These allow many inmates to secure an early release and commit them to gratitude to their government for its generosity.

789. A considerable number among the *kyohwaso* inmates are incarcerated for having exercised their human rights. Persons who try to cross the border into China without authorization may be imprisoned in a *kyohwaso*, in particular if they are repeat offenders or come from families with bad *songbun* social class. As Christianity is spread in the DPRK, ordinary followers of the Christian religion with good *songbun* are increasingly sentenced

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[1174] See below, sub-section a) for a listing of known ordinary prison camps and sub-section b) for figures on short-term forced labour detention facilities.

[1175] Human Rights Council, Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea, A/HRC/13/13 (2009), para. 45. This principle is also anchored in article 31 of the DPRK Criminal Code.

[1176] CCPR/C/SR.1944, para. 28.

[1177] DPRK responses to the list of issues and questions for consideration of the initial report, Committee on the Elimination of Discrimination against Women (CEDAW) Working Group 33rd session, CEDAW/PSWG/2005/II/CRP.2/add.3, p. 7.

to imprisonment in ordinary prison camps. Church leaders, active missionaries and other high-profile offenders continue to be sent to political prison camps.[1178]

(i) *Size and location of ordinary prison camps*

790. The name, location and set up of a number ordinary prison camps (*kyohwaso*) is relatively well known. Like the political prison camps, the authorities have assigned them numbers:

- Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri (North Hamgyong Province) is one of the biggest and perhaps the best-documented ordinary prison camp. Many of its inmates were forcibly repatriated from nearby China or had contact with the Christian churches operating in the border region. The prison has an estimated 3,000-4,000 inmates, including about 1,000 female prisoners who have been housed in a separate building since 2009. *Kyohwaso* No. 12 operates a copper mine, as well as logging and farming enterprises.
- Ordinary Prison Camp (*kyohwaso*) No. 1 is located in Kaechon City (South Pyongan Province) and has about 2,000 male and female prisoners. The prison has a factory that produces clothing and textiles, some of which is apparently being exported to countries in the region.
- Ordinary Prison Camp (*kyohwaso*) No. 4 serves mainly as a place of detention for residents of Pyongyang and some members of the military. Its main site with an estimated 4,000 prisoners is located in Samdung-ri, Kangdong County (South Pyongan Province). The prison also has several outposts in Pyongyang. The Hyongsan outpost serves as a model prison occasionally shown to outside visitors. However, the rest of the prison complex is grossly overcrowded. In 2008, the entire prison complex reportedly housed around 12,000 male and female prisoners, four times as many as its intended capacity. The prison camp operates a coal mine and various factories.
- Ordinary Prison Camp (*kyohwaso*) No. 6 in Sariwon City (North Hwanghae Province) consists of three sites. One of the sites at Dorim has been shown to foreign visitors. The prison has 3,000-4,000 prisoners who are forced to engage in farming and the production of clothing and shoes.
- Ordinary Prison Camp (*kyohwaso*) No. 9 in Hamheung (South Hamgyong Province) was already built during the Japanese colonial period. The *Kyohwaso* consists of a men's prison (estimated 1,500 inmates) and a women's prison (500 inmates). The prison operates a coal mine and also produces sewing machines and livestock.
- Ordinary Prison Camp (*kyohwaso*) No. 11 in Cheungsan (South Pyongan Province) is located in a mountainous area. It consists of smaller housing structures and focuses its economic activities on farming, livestock and salt manufacture. According to reports, it has 3,000-5,000 male and female inmates.
- Ordinary Prison Camp (*kyohwaso*) No. 22 at Oro, Yongkwang County (South Hamgyong Province) is a smaller facility that was upgraded from a labour training facility to a regular prison camp in 2006. Its male and female inmates are mostly forced to work in farming.[1179]

[1178] See above, section IV.A.

[1179] The Commission could confirm the existence of these prisons based on testimony from former inmates and/or admission of their existence by the DPRK. Additional information on the prisons is

791. Less information is available on some of the other *kyohwaso* that reportedly exist, including:

- Ordinary Prison Camp (*kyohwaso*) No. 88, located in Chuksan Village, Wonsan City (Kangwon Province), is said to have about 2,000 prisoners. Since 2007, it also houses female inmates.
- Ordinary Prison Camp (*kyohwaso*) No. 2 in Dongrim County (North Pyongan Province)
- Ordinary Prison Camp (*kyohwaso*) No. 3 in Sinuiju (North Pyongan Province)
- Ordinary Prison Camp (*kyohwaso*) No. 7 in Kanggye City (Chagang Province)
- Chonma Ordinary Prison Camp in Chonma County (North Pyongan Province)
- Yongdam Ordinary Prison Camp in Chonnae County (Kangwon Province).[1180]

792. The Commission cannot exclude the possibility that there are other ordinary prison camps (*kyohwaso*), which are not yet known to the outside world.

(ii) *Unfair trials preceding imprisonment*

793. Occasional cases of security officials committing a person without trial to ordinary prison camps have been reported. Yet, most inmates of ordinary prison camps (*kyohwaso*) have been sentenced to a defined prison term following conviction at trial. However, such trials fall short to such an extent of the most basic fair trial guarantees, that many convicted inmates must be considered victims of arbitrary detention. The lack of independence and impartiality of the judicial system manifests itself in a judicial process that appears commonly to take the guilt of the accused for granted.[1181]

794. Article 164 of the DPRK Constitution prescribes that the accused is guaranteed the right of defence. In practice, trials often do not involve an actual evidentiary discovery process. The defendants are expected to confess their crime and show repentance.

795. A senior law officer working at the Supreme Court of the DPRK, when speaking to a visiting foreign delegation, reportedly summed up the presumption against innocence prevailing in the DPRK as follows:

> *"Most defendants are those whose crime has already been revealed, before indictment, through investigation by the police. When a person comes to court, we do not think of them as innocent."*[1182]

796. The Code of Criminal Procedure provides a right to defence counsel, which is usually state-assigned. Yet, a number of witnesses testified before the Commission how their own state-assigned defence counsel either said nothing or even joined the judge and the prosecutor in berating them for their conduct. At most, defence counsel pleaded for leniency, commonly based on the defendant's good *songbun*.

797. The DPRK Constitution requires trials to be open. However, article 271 of the Code of Criminal Procedure sets out broad exceptions, including by allowing for closed

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based on NKDB, *Prisoners in North Korea Today*, pp. 59 ff. See also the list of known kyohwaso in David Hawk, *The Hidden Gulag*, pp. 19 and 83 ff.

[1180] NKDB, *Prisoners in North Korea Today*, pp. 59 ff.

[1181] On the lack of independence and impartiality of the judicial system, see also section III.E.

[1182] United Kingdom All Party Parliamentary Group for North Korea, "Building Bridges not Walls: The Case for Constructive, Critical Engagement with North Korea", October 2010, p. 23. Available from http://www.jubileecampaign.org/BuildBridgesNotWalls.pdf.

proceedings "in case of negative impact". In practice, out of fear of attracting the suspicion of the authorities, hardly anyone dared to watch a trial unless officially summoned.

- Mr Kim Gwang-il was convicted to imprisonment in a *kyohwaso* by the People's Court in Hoeryoung City (North Hamgyong Province). The trial took place in a small room in the Court, with one judge, one prosecutor, one defence attorney and two citizen jury members present. The judge never bothered to ask whether he was guilty:

  "In North Korea, it's just unimaginable. The judge will not ask [whether you are guilty or not] and the judge will just simply make decisions. So let's just get this person this many years and that many years. And the judge will never ask if we are guilty or not."[1183]

  Mr Kim had no opportunity to speak to his state assigned attorney before the trial. The attorney also did not ask him any substantive questions during the proceedings or attempt to argue a defence. Instead, he merely asked Mr Kim if he had any pilots or military officers in the family, which would have helped achieve a more lenient sentence.

- Mr Kim Hyuk described the trial leading to his conviction to three years imprisonment for illegally crossing the border into China. Mr Kim received what he called an "*unofficial trial*" at the police station. There was a judge, a prosecutor, a defence attorney and a judge present. The defence attorney did not confer with Mr Kim nor make any substantive representation. At the very end of the proceedings, he merely asked the judge for leniency because Mr Kim was young and an orphan.[1184]

- In the trial that led to her being sentenced to three years of imprisonment in Ordinary Prison Camp (*kyohwaso*) No. 11, the witness had to keep her head down the entire time and was only allowed to say yes as her alleged crimes were being read out to her.[1185]

- Another man was convicted and sentenced to nine years of imprisonment in Ordinary Prison Camp (*kyohwaso*) No. 12 for hitting a prosecutor during the course of an interrogation. During the trial, his own defence counsel harshly criticized him for his conduct.[1186]

798. The abovementioned 2012 survey of persons who fled the DPRK, which was carried out by the Korean Bar Association in the Republic of Korea, found that only 19 per cent of the respondents who underwent a criminal trial met their lawyer before the trial. Only 5 per cent believed their lawyer was of any help. In only 57 per cent of trials both the prosecutor and the defence attorney were in attendance. In 81 per cent of cases, the courts called no witnesses in favour of the defendant. Only 54 per cent were allowed to make a final statement in line with article 330 of the DPRK Code of Criminal Procedure. Almost half of all respondents (46 per cent) were subject to a closed trial.[1187]

(iii) *Inhumane conditions of detention*

799. In accordance with article 30 of the DPRK Criminal Code, the civil rights of *kyohwaso* inmates are considered to have been partially suspended. However, compared to

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[1183] Seoul Public Hearing, 24 August 2013, morning (00:23:48).

[1184] Seoul Public Hearing, 22 August 2013, morning.

[1185] TBG011.

[1186] TJH009.

[1187] See KBA, *2012 White Paper on Human Rights in North Korea* (2013), pp. 210 ff.

political prison camp inmates, they derive a modest measure of protection from the fact that ordinary prison camps are subject to oversight by the Office of the Prosecutor. In addition, inmates are entitled to receive a family visit once a month, although in practice the family usually has to bribe the prison authorities to be able to see the prisoner and to provide him or her with food and other necessities of survival.

800. The Commission finds that prisons in the DPRK are generally severely overcrowded. Toilets are shared and rarely cleaned. There are no showers and prisoners can only wash themselves on irregular occasions. They are often not given any soap or other hygiene materials. Many prisons are poorly heated during the harsh Korean winters. Inmates are expected to bring their own clothes and blankets. Otherwise they are provided unwashed second-hand materials, which are infested with lice, bed bugs and other vermin.

- Mr Kim Gwang-il described how in Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri up to 60 or 70 people were kept in a cell designed for 14 to 17 people. At night, people had to take turns lying down, while others in the cell were standing. This led to extreme exhaustion among the prisoners. [1188] Another witness, who was incarcerated in the same prison until 2011, added that inmates who did not receive blankets from their families had to make their own from their own clothes. The cells were infested with bugs and lice and infectious diseases spread easily.[1189]

- According to another former inmate of *Kyohwaso* No. 12, the newly constructed female ward was equally overcrowded. There were 1200 women in a facility constructed for 200 inmates. The hygienic conditions were abysmal and lice and cockroaches abounded. Even in winter, the female inmates could only wash themselves in the river under the eyes of male guards. Only their family members provided them with soap and sanitary napkins, which they often had to wash out and reuse.[1190]

- A former female inmate of Ordinary Prison Camp (*kyohwaso*) No. 11 at Cheungson described how she was held with 40 to 50 inmates in a cell of approximately 40 square metres in the female section. People could not lie down straight and fights about space were frequent. In winter, it was extremely cold in the cellblock. Inmates could only wash themselves once a month, and everyone had lice. Every month, at least two people from her cell died.[1191]

801. Like the political prison camps, the ordinary prison camps also operate mines, factories, farms and logging camps by extracting forced labour from their inmates. The profits of these ventures do not seem to be reinvested in the prisons. Prisoners produce more food in quantity and variety than is provided to them. While international law does not outlaw all forms of involuntary prison labour for purposes of reforming duly convicted criminals, the type of labour that ordinary prison camp inmates are forced to do amounts in almost all cases to a form of illegal forced labour as defined by international standards.[1192]

[1188] Seoul Public Hearing, 24 August 2013, morning.

[1189] TAP016.

[1190] TBG013.

[1191] TBG010.

[1192] In application of the standards set out by International Labour Organization (ILO) Conventions No. 29 and No. 105 on Forced Labour, the ILO considers that any of the following types of involuntary prison labour amounts to forced labour : involuntary work performed by prisoners who have not been duly convicted in a court of law ; involuntary work performed by a prisoner for the benefit of a private undertaking ; any involuntary labour that serves the purposes of political coercion or education, or as a punishment for holding or expressing political views; workforce mobilization for purposes of economic development; labour discipline; punishment for having participated in strikes;

Prisoners are typically not duly convicted in a proper court of law, but usually sentenced to imprisonment in trials that fail to respect the most basic guarantees of fairness. The forced labour of prisoners must also be regarded as a form of political coercion, since it is systematically coupled with compulsory daily indoctrination sessions focusing on the achievements and teachings of the ruling Kim family. In this regard, the Commission finds that the prison system does not seek to reform prisoners in a human rights-compliant sense, but serves to subdue them and re-establish their absolute obedience to the political system and its leadership.

802. This finding is reinforced by the fact that work conditions are so inhumane that the work cannot be said to serve any legitimate, rehabilitative purpose. Surviving on starvation food rations, the prisoners are forced to work without pay for 9-12 hours every day of the week. Work that was normally be undertaken by machines or beasts of burden (e.g. ploughing or coal extraction) must be carried out manually in the DPRK's prisons, using rudimentary tools. If prisoners fail to fulfil their onerous daily work quotas or accidentally damage prison property, they are subject to torture and inhuman punishment, including beatings, solitary confinement and cuts to their already meagre food rations. Deadly work accidents are very frequent because little consideration is given to work safety.

- One former inmate worked in the limestone quarry and the gold mine of Ordinary Prison Camp (*kyohwaso*) No 4 in Kandong County, South Pyongan Province. The inmates were so tired and exhausted that work accidents were very frequent. On one occasion, he suffered an open fracture of his foot in a mining accident. The skin was sewn together without anaesthesia and he was ordered to report back to the mine the same day. He only survived, because the head of his work unit reassigned him to lighter duties.

  He witnessed several workers being crushed to death after their hands or clothing got caught in the limestone crushing machine. The air was so dusty that they could not see very well. They just heard a scream and when they rushed to the machine they find a mangled body hanging from the crusher.[1193] Very similar types of deadly crushing accidents were related by another witness, who worked in the copper mine of *Kyohwaso* No. 12 of Jonggo-ri.[1194]

- A former inmate of Ordinary Prison Camp (*kyohwaso*) No. 22 at Oro had to farm without proper tools and even had to spread fertilizer consisting of human faeces with their bare hands.[1195]

803. In a 2005 submission to the Committee on the Elimination of all Forms of Discrimination against Women, the DPRK contended that female inmates only work in workshops that produce such items as clothes, shoes or bags, for which they are remunerated.[1196] While the Commission has not received any information about women having to engage in mining in the ordinary prison system, it received numerous credible accounts from female inmates that they had to engage, without pay, in backbreaking work in forestry and farming.

- A former female inmate of Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri, had to rise every morning at 5 a.m. She collected wood until 10p.m. every day.

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or racial, social, national or religious discrimination. See ILO, "Combatting Forced Labour: A Handbook for Employers and Business", 2008, pp. 10 and 15.

[1193] TSH035.

[1194] TAP016.

[1195] TBG018.

[1196] CEDAW/PSWG/2005/II/CRP.2/add.3, p. 8.

Inmates who worked too slowly were beaten. Inmates only received used clothes and she could hardly walk in the ill-fitting shoes given to her. When she could not keep up with the rest of her unit marching to work, the guard put a rope around her neck and dragged her along.[1197]

- A female inmate, who was detained at *Kyohwaso* No. 12 until 2011, had to do hard farming work. However, the food produced in the farms was used to feed the guards. The small rations left her so hungry that she ate different types of grass, wild mushrooms and tree bark to survive. A number of times, she saw other inmates being beaten for stealing food.[1198]
- Similar hard farming work was also forced on another woman, who was detained at *Kyohwaso* No. 12 until the end of 2010. The guards always watched the hungry prisoner to make sure that they did not take any of the corn they had to grow. When the female prisoners concluded their work at around 7 p.m. in the evening, they still had to sit through long indoctrination sessions emphasizing the greatness of Kim Jong-il and Kim Il-sung.[1199]

804. When they enter the ordinary prison camps, most new arrivals are already weak and starving following weeks or months of starvation rations in interrogation detention centres and temporary police holding facilities. At the *kyohwaso* they continue to be exposed to starvation. Food rations provided in the ordinary prison camp vary depending on the forced labour a prisoner is assigned to do and the prisoner's conduct. Despite having to engage in strenuous types of forced labour, the average prisoner only receive about 300 grams of rough corn porridge or cooked rice with beans per day. This amount of food provides only a fraction of the minimum dietary energy requirement for adults in the Democratic People's Republic of Korea, as calculated by the United Nations.[1200] Therefore, those who do not find additional sources of food are effectively condemned to starving to death. Many inmates of ordinary prison camps survive only thanks to extra food that their families bring during monthly visits. Others feed themselves by hunting rodents and other vermin, eating grass and wild plants or finding ways to divert animal feed for their own use.

805. Former officials confirmed that the policy of starvation rations is deliberate, so as to keep prisoners weak and easy to control. This is also evidenced by the fact that the surplus food and other resources generated by the prisons' forced labour do not appear to be applied towards providing prisoners with adequate food and other necessities of survival.

- Mr Kim Gwang-il, a former inmate of Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri testified that the prisoners starved as they only received 80 grams of bad quality food per meal:

  Most people became very weak. The food they gave us was less than 80 grams per meal but if you did something wrong, if you slipped up, they would give you less. … They fed us some things that not even the pigs would eat, like for example, rotten cucumber. Boiled rotten cucumber was given to eat. And if we refused to eat that we

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[1197] TBG003.

[1198] TLC023.

[1199] TSH018.

[1200] The Food and Agriculture Organization (FAO) has established a Minimum Dietary Energy Requirement of 1870 calories per day for the average adult in the Democratic People's Republic of Korea. Available from http://www.fao.org/fileadmin/templates/ess/documents/food_security_statistics/MinimumDietaryEnergyRequirement_en.xls. Thre hundred grams of good quality corn porridge provide only about 300 calories. The same amount of cooked rice and beans provide about 350 calories.

would be punished. Sometimes we would be punished by being given less than 50 grams [of food].[1201]

- Mr Kim added that prisoners became so desperate that they hunted and ate the snakes that lived on the prison's premises.

- Mr Kim Hyuk, another former inmate of *Kyohwaso* No. 12, indicated that most prisoners only survived thanks to the food their families bring them. Some inmates waited in vain for their family and would die. Since he was an orphan, Mr Kim could not rely on any help from outside:

  "I knew I had to survive on my own. So I would eat anything, and I ate lizards, snakes, rats, whether it was reptiles, whatever.... in the springtime, I would eat grass, but if you eat the wrong grass, then you would get poisoned and you would get all the swelling and bloated. I would eat different types of grass and the roots."[1202]

- According to another inmate of Ordinary Prison Camp (*kyohwaso*) No. 12, inmates only received five small potatoes in the morning and a small cup of corn porridge and salted soup with some cabbage leaves for lunch and dinner. Everyone was very hungry and rapidly lost weight. Those who did not have family to bring food them food died quickly. On one occasion an inmate consumed everything his family sent him at once because he was so hungry. He was not used to taking in so much food and vomited. He swept the vomit into a bag to keep it for when he got hungry again.

  On another occasion, the witness's work unit had to plant seeds into little pots that were later planted as seedlings onto the field. Fearing the hungry inmates would eat the seeds, the guards soaked them in urine and manure. The inmates still tried to eat them. Therefore, the guards made them call their prisoner numbers, going round and around between the prisoners, so that none of them had a free moment to chew and swallow any seeds. If prisoners did not say their number, the guards put a walnut sized rock in their mouth to prevent them from eating.[1203]

- According to a former inmate of Ordinary Prison Camp (*kyohwaso*) No. 9 in Hamhung, the inmates were so malnourished that they looked like skinny sticks with big heads. Prisoners tried to catch rats to survive. However many were no longer fast enough, given that they were forced to work outside every day from 8 a.m. until late in the evening, regardless of the weather. Some prisoners from more privileged backgrounds bribed the guards to be assigned better rations and easier forced labour. Such prisoners were nicknamed the "dining class". [1204]

(iv) *Torture and executions*

806. Inmates of ordinary prison camps are subject to strict rules and must demonstrate absolute obedience to the guards. Failure to obey an order is punished in a variety of ways, ranging from food ration cuts and deprivation of sleep to reassignment to harsher labour, beatings and solitary confinement in tiny cells. Former inmates of different ordinary prison camps indicated that solitary confinement meant imprisonment in cells so small that the victim could not lie down or stand up. During time served in solitary confinement, the food ration is reduced to less than 100 grams of rice or corn porridge per day.

[1201] Seoul Public Hearing, 24 August 2013, morning (00:53:10).

[1202] Seoul Public Hearing, 22 August 2013, morning (00:37:42).

[1203] TJH009.

[1204] TSH019.

807. Guards often impose punishments on prisoners on the spot. Even serious cases of physical abuse by the guards or prison unit leaders, acting on their behalf, do not result in any accountability. Prisoners incarcerated for politically sensitive crimes are often singled out for particular punishment.

- Mr Kim Gwang-il described how guards at Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri had the right to beat or otherwise torture them at any point, including for trivial matters such as snoring while sleeping. The guards also assigned inmates to the worst forced labour or cut their rations based on reports of misconduct they received from informers among the prisoners.[1205]
- A former inmate of Ordinary Prison Camp (*kyohwaso*) No. 1 at Kaechon, who was sent to prison for expressing her Christian religion, was punished 10 times with solitary confinement during her seven years of detention. She was also assigned to pull the cart used to remove excrement from the prison latrines. Several times the guards made her lick off excrement that had spilled over in order to humiliate and discipline her.[1206]
- Another former prisoner recounted how he and other prisoners of Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri were ordered to protect the stems of corn from heavy rains by placing earth around it. When inmates used the occasion to eat corn and the guards caught them, they made them keep a corn stalk in their mouth all day. Any inmate dropping the stalk received a heavy beating.[1207]
- A man who had been convicted in relation to illegal travel and smuggling across the Chinese border talked o a fellow inmate in his cell at *Kyohwaso* No. 12, even though that was not allowed. The guard punished him by ramming a metal rod in his mouth, causing him to lose several teeth.[1208]
- Another former inmate of *Kyohwaso* No. 12 broke the rule of never looking a prison official in the eye. According to his testimony, he was beaten with a club and kicked until he bled and his arm was broken.[1209]

808. Ordinary prison camps in the DPRK are usually secured by high walls topped with barbed wire and electrified fences with a deadly voltage. Closed circuit television (CCTV) cameras have also recently been installed to monitor the interior of the prison. Guards have the right to shoot to kill escaping prisoners. Those who are caught alive are subject to extremely harsh punishment. Until a few years ago, inmates who tried to escape were summarily executed on a regular basis. It is uncertain whether such executions remain the practice today.

- Mr Kim Hyuk witnessed the execution of a prisoner of Ordinary Prison Camp (*kyohwaso*) No. 12 who attempted to escape. Mr Kim himself narrowly escaped execution, when on one occasion he was separated from his work unit, while in the mountains. He was investigated for attempted escape and the guards beat him with their rifle butts in the head to force him to confess. Eventually he was able to convince them that he had only become lost.[1210]

[1205] Seoul Public Hearing, 24 August 2013, morning.

[1206] TBG014.

[1207] TJH009.

[1208] TJH010.

[1209] TAP016.

[1210] Confidential interview.

- In 1997, another inmate of Ordinary Prison Camp (*kyohwaso*) No. 12 was forced to watch the execution of a man who attempted to escape. After the execution was over, the prison's director had his driver tie a rope around the neck of the dead prisoner. The other end of the rope was tied to the back of a car. The car drove four times around the prison court yard, dragging the body behind it. All inmates had to watch this brutal spectacle, which was meant to serve as a warning against future escape attempts.
- Another witness, imprisoned at Ordinary Prison Camp (*kyohwaso*) No. 11 in Cheungsan from 2004 to 2007, recounted that it was established prison policy to summarily execute anyone caught trying to escape. The witness saw several executions of such prisoners.[1211]
- According to another man who was detained at Ordinary Prison Camp (*kyohwaso*) No. 12 until 2011, prisoners who tried to run away were shot to death while trying to escape. The witness did not see any summary executions of those caught alive. Such inmates were reassigned to harsh work that likely caused them to die. Each prisoner was also partnered up with another prisoner and ordered to watch the other. In case one attempted to escape, the other prisoner was also punished.[1212]

(v) *Rape and forced abortion*

809. There is an increasing number of female prisoners, not least since many of those who flee to China and are subsequently repatriated are women. Male and female inmates are generally kept separate, in line with international standards. However, male guards are often assigned to guard female prisoners. While sexual contact between guards and prisoners is not condoned by the prison authorities, the power differential between guards and inmates makes it easy for guards to abuse and rape prisoners with impunity. The instances of rape include cases where guards demand sex in exchange for food or other essential goods that prisoners require to survive the ordinary prison camp, thus taking advantage of the coercive circumstances of the prison environment.[1213] It is difficult to quantify the number of rapes taking place in the DPRK's ordinary prison system, since many victims will not reveal such abuse in light of the social stigma attached to rape.

- Mr Kim Hyuk witnessed how the hospital chief raped a woman at *Kyohwaso* N. 12. On another occasion, he saw a guard raping a woman.[1214]
- According to a former female inmate of the same prison, the guards had the prettier among the female inmates sit close to the bars, so that they could grope their breasts. The same witness also knew several women who agreed to sexual contacts with the guards to receive more than the usual starvation rations or other benefits that allowed them to survive. On one occasion, one female inmate spoke about such a sexual contact with others. The guards made her kneel outside covered from head to toe in thick layers of snow, so that she appeared like a grotesque human snowman.[1215]

[1211] TBG006.

[1212] TAP016.

[1213] Sexual contact by taking advantage of coercive circumstances amounts to rape. See the references provided in section IV.E.3 d).

[1214] Information provided during a confidential interview preceding Mr. Kim's participation in the Seoul Public Hearing.

[1215] TBG003.

In the past, women who entered the prison already pregnant or become pregnant in prison regularly had to undergo a forced abortion, including at the late stages of the pregnancy when the foetus is already viable to survive on its own. Some prisons systematically administered blood tests to new female inmates to check for pregnancies. In more recent years, more cases have been reported of women being allowed to leave the prison to have the child and then return while the child remains in the custody of family members. [1216]

- The authorities at Ordinary Prison Camp (*kyohwaso*) No. 9 forced the witness, who served as a medical assistant, to administer a fellow inmate who was three months into her pregnancy with a deworming medicine so as to trigger an abortion. When this medication failed to have the desired effect, the victim was forced to drink an opium concoction and aborted the child. The foetus was fed to the pigs kept in the prison. [1217]
- Another witness related the case of a fellow inmate forced to have an abortion while the witness was imprisoned at Ordinary Prison Camp (*kyohwaso*) No. 12 from 2004-2011. [1218]

(vi) *Lack of medical care, deaths in custody and lack of respect for the dead*

810. The Commission finds that, every year, thousands of people die in the ordinary prison camps in the DPRK. They die from deliberately imposed starvation, disease, executions and injuries sustained as a result of work accidents and beatings.

811. Starvation and related diseases constitute the primary cause of death. In many prisons, the authorities have devised regular starvation check-ups to systematically identify those who are expected to die soon. Despite methodically keeping track of starvation in prisons in this manner, the authorities are not changing the underlying policies that lead to such starvation. Instead, those who are found to be in a critical stage are taken out of their work units. No meaningful medical interventions are provided to prevent prisoners in a critical state of starvation from dying. On some occasions, prisoners who are deemed to be terminally ill are released and handed over to their families in the expectation that their death is highly likely to occur quickly.

- During his imprisonment at Ordinary Prison Camp (*kyohwaso*) No. 9 at Hamhung, the witness was assigned to work as a "medical apprentice". In this role he came to know that 480 out of 1200 inmates who were held there in the winter of 1999/2000 died over the course of six months. Medical staff regularly measured the space between a prisoner's buttocks to gauge his or her level of starvation. Those classified to be in a critical stage were taken out of their forced labour units and brought to a dying room. They were provided with the usual food, but no medicine or any treatment to prevent death from starvation. The prisoners assigned to help them were themselves so hungry that they tried to steal the dying prisoners' food. The bodies of those who died were collected in a storeroom, where rats often gnawed on their bodies, before being burned in large numbers in a furnace on the prison grounds. [1219]
- Mr Kim Gwang-il indicated that similar starvation check-ups were performed at *Kyohwaso* No. 12 to find those who were likely going to die from starvation:

[1216] See also NKDB, *Prisoners in North Korea Today*, p. 436.

[1217] TSH019.

[1218] TAP016.

[1219] TSH019.

> *"Everybody suffers from malnutrition. In the jail, they determine whether you are physically weak or not by stripping you naked and they see how your butt cheeks are. If your butt cheeks are apart and loose, the guards see if their fists can fit in between the butt cheeks. And that's how they determine whether if you are weak or not. The person standing up received 'class 1st weakness', the one standing to his sideways is '2nd class', and the third person is '3rd class'. So if you are determined to be weak like them, you will never make it out of this camp."*[1220]

- The Commission also received testimony from a man, who served as a medical assistant during his imprisonment in Ordinary Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri. During the 12 months he spent there, everyone suffered from malnutrition and he personally knew of 178 cases of prisoners who died. He was required to wake people up during the night and see if they were lucid. Those who were not, were given a drip for five minutes, but no other intervention. Some prisoners who were close to dying were sent back to their family to die there.[1221]

812. A large number of the weak prisoners die from infectious diseases. The dismal hygienic conditions in the overcrowded cells provide an ideal breeding ground for infectious diseases. Epidemics regularly ravage the ordinary prison camps. Prisons usually have a military doctor who is assisted by unlearned prisoners. However, the medical facilities lack the equipment and medicine necessary to provide effective medical assistance. Inmates who get seriously ill often survive only because of medicine supplied by their families.

813. The bodies of those who die in prison are never returned to their families. Instead, they are often tossed into mass graves or collectively burnt without respect for the dignity of the dead. The families are often not notified about the death, although many come to find out when they arrive to visit a relative and are told that the inmate has died.

- Ms Jee Heon A described how, in one day alone, a disease causing severe diarrhoea killed about 20 inmates at *Kyohwaso* No. 11 at Cheungsan. They did not have any medicine, except for burnt corn stalks that had been ground into a powder. The bodies were buried in a mass grave known as "flower hill". Among the victims was a close friend of Ms Jee:

  > *"She began to lose a lot of weight to the point that she could not get up, and eat with her own hand ... there was nothing I could do. I could not give her any medicine. And when she died, she couldn't even close her eyes. She died with her eyes open. I cried my heart out."*

  Ms Jee tied a bottle around her dead friend's body with a piece of paper noting her name, date of birth and date of death so that she may be recognized one day.[1222]

- Another former inmate of Ordinary Prison Camp (*kyohwaso*) No. 11 described how she hunted frogs and rats and ate grass to survive. Especially in winter, lots of inmates were dying of starvation. Many people also died from diseases including diarrhoea, since no medicine other than a few medical herbs was available. Her job was to carry the bodies to the "flower hill" mass grave which was said to already be the burying ground for 5000 bodies. They had to dig holes for the dead that were so small and shallow that the bodies had to be bent to fit. On some occasions the deceased person's knees stuck out of the ground.[1223]

[1220] Seoul Public Hearing, 24 August 2013, morning (00:50:20).

[1221] TSH036.

[1222] Seoul Public Hearing, 20 August 2013, afternoon (02:55:10).

- According to Mr Kim Gwang-il, there were hundreds of deaths during his two years and five months at Ordinary Prison Camp (*kyohwaso*) No. 12. Mr Kim was himself involved in the disposal of the bodies of over 100 prisoners. The bodies were collected in a storeroom, where they were often eaten by rodents or rot in the summer heat. When enough bodies had piled up, they would be heaved on a large cart and driven up to the mountains, where they were burnt. Inmates who were strong enough were forced to assist in the disposal of the bodies. Mr Kim described how the bodies were *"burnt like rubbish"*, with the mortal remains sometimes being used as fertilizer for the prison fields.[1224]

- A former male inmate confirmed that the practice of burning the dead collectively and using their ashes as fertilizer carried on at Ordinary Prison Camp (*kyohwaso*) No. 12 was still ongoing when he was released in 2011. On one occasion, he was forced to bring a pile of bodies up the mountain and saw that rats had already gnawed of the flesh from their faces. The witness estimates that at least 800 prisoners died every year from malnourishment, infectious diseases and accidents at work.[1225]

- A former prisoner remembered that in 1997 and 1998, around 500 inmates died from a typhoid epidemic in *Kyohwaso* No. 12 at Jonggo-ri. Another former inmate experienced a second typhoid epidemic that ravaged in that prison in the winter of 2009/2010.[1226] So many people died that entire work units ceased to function. She contracted typhoid herself and got so weak that the guards dumped her in the room assigned for inmates who were considered close to death. She thinks she survived only because she licked the icy water from the windows to bring down her fever. When it was discovered she was still alive she was sent back to her cell. Only later was she provided with medication that helped her survive.[1227]

- A woman who was imprisoned at Ordinary Prison Camp (*kyohwaso*) No. 22 at Oro recalls that lots of people died from starvation and beatings in the prison. Their bodies were collected in one of the corn barns and then dumped into a mass grave.[1228]

- A former MPS official saw numerous starving prisoners who were left to die during a visit to *Kyohwaso* No. 4 in Kandong County.[1229] Shocked by what the witness saw, the witness made an enquiry with the MPS Corrections Bureau in 2010 and was informed that more than 800 inmates per year were dying in *Kyohwaso* No. 4. The death toll was aggravated by the fact that many inmates were from nearby Pyongyang. In consequence of them having committed crimes, their families had been banished from Pyongyang to remote provinces.[1230] This meant that the families could not regularly visit them and bring food.

[1223] TBG010.

[1224] Seoul Public Hearing, 24 August 2013, morning.

[1225] TAP016.

[1226] TSH018.

[1227] TJH009.

[1228] TBG018.

[1229] TGC004.

[1230] See also section IV.C.1 a) (i).

(b) Short-term forced labour detention camps

814. Persons who are found to have committed smaller crimes may be sent to short-term prison camps, where they are usually imprisoned for periods ranging from one month to one year. For example, persons repatriated from China, who convince the SSD that they spent a relatively short time there and avoided contact with churches or ROK citizens, are typically sent to such prison facilities. People of good *songbun* who are caught using a Chinese mobile phone or watching foreign movies might get away with a stint in such facilities.

815. Men and women are kept separate in line with international standards. Among the inmates of some facilities are also children. However, they are generally assigned lighter forms of labour.

816. The vast majority of short-term forced labour camps are administered by the MPS and local authorities. A very small number of the known short-term forced labour detention camps are run by the SSD and the KPA Military Security Command.

817. The most common among the short-term prisons are called "labour training camps" (*rodongdanryundae*). They started being set up from the 1990s, in accordance with an order from Kim Jong-il that correctional facilities for misdemeanours should be established by local authorities at the county level.[1231] Today, article 31 of the Criminal Code, which foresees the punishment of labour training, provides the legal basis for such camps.

818. In a comprehensive 2012 study, the Database Center for Human Rights in North Korea identified 49 labour training camps administered by the MPS and two by the KPA Military Security Command.[1232] The true number might be a lot higher considering that such facilities were to be established at the level of every county.

819. In addition, the MPS operates facilities referred to as labour reform centres (*kyoyangso*) in provinces and major cities.[1233] Perpetrators of crimes of medium severity, including less grave forms of "anti-socialist behaviour", are often assigned to forced labour in these prisons. The MPS and SSD holding centres (*jipkyulso*) are also effectively used as places of punishment in the DPRK, although there appears to be no legal basis for that.[1234]

820. Inmates of all three categories of short-term prisons have in common that their punishment resulting in loss of liberty is not based on criminal conviction by a court of law, as would be required by international law. Instead, their guilt and punishment was determined by the MPS or the SSD, which form part of the executive branch of government. Only in a minority of cases, inmates of labour reform centres and labour training camps have gone through a trial, and if they did it so it was the type of grossly unfair judicial trial described above.[1235] Therefore, hardly any of the inmates can considered to be duly convicted by a court of law; they are victims of arbitrary detention and illegal forced labour as defined under international law.

- After her interrogation under torture was concluded, the witness was "sentenced" by an SSD agent to six months at a labour training camp for having illegally crossed into China. The agent took into account as a mitigating circumstance that she had only spent a very short time in China and had gone there with the intent to support her family. She had to sign (by finger print) a document pledging never to go to China again and not to disclose what happened to her during her interrogation by the SSD.[1236]

[1231] NKDB, *Prisoners in North Korea Today*, p. 33.

[1232] NKDB, *Prisoners in North Korea Today*, p. 51.

[1233] A more accurate literal translation of the Korean word *kyoyangso* would be "reform through teaching centre".

[1234] See section IV.C.2.d) iii on the treatment in the police holding centres (*jipkyulso*).

[1235] See section IV.E.1 b).

- Another woman recounted how SSD agents committed her, without any form of trial, to a labour training camp in South Hamgyong Province, because she had been illegally in China. She was never told how long her punishment would be and ended up being kept for four months. The witness ascribes her survival only to the fortunate coincidence that the camp's manager was an old friend of her father's.[1237]
- In 2009, the witness, a young woman from Hyesan (Ryanggang Province), was denounced by her friend, because she had secretly watched movies produced in the ROK. Four MPS officers interrogated her until 3 a.m. in the morning and slapped her face until she admitted to her "crime". Thereafter, she was detained incommunicado and forced to write a confession statement. After nine days of detention, she was brought before a gathering of police officers. Her "trial" before these police officers consisted of an announcement what crime she committed and that she had to serve six months of imprisonment.[1238]

821. Short-term forced labour detention camps positively distinguish themselves from the ordinary prison camps because prisoners can receive family visits on a more frequent basis. Security measures also tend to be less strict. There are only few reported cases of escape attempts from such prisons that resulted in summary executions.[1239]

822. In other respects, however, the inmates of short-term prisons suffer violations similar to those in ordinary prison camps (*kyohwaso*). Kept in inhumane hygienic conditions, they have to engage in forced labour while receiving so little food that they face starvation. Prisoners who do not perform their work well or who disobey the guards are beaten, often severely. Few, if any medical services are provided in the short-term camps. Prisoners who become very sick are taken to local hospitals. Many prisoners die from starvation, disease or injuries sustained during beatings and work accidents. In a considerable number of cases, prisoners who are expected to die soon are handed over to their families, so that the detention camp is not saddled with the responsibility and the burden to handle the dead body. Witnessed also relayed a number of cases of forced abortion carried out in labour training camps.

- Detained in a labour training camp in Hamhung (South Hamgyong Province) after his repatriation from China, Mr Timothy only received five spoons of unspiced rice and bean porridge per meal. The malnourished inmates, who looked like "skeletons barely covered with skin", had to be up from 5 a.m. until 10 p.m. every day. In addition to having to perform hard labour, they also received ideology instruction. Those who failed to memorize the teachings of Kim Il-sung correctly had their prison term extended. After a month or two of imprisonment, a lot of inmates died:

  "You see so many bodies, dead bodies, coming out of the detention centres. People who try to escape [the DPRK] are the first ones to go out dead."[1240]

[1236] TJH028.

[1237] TBG010.

[1238] TAP010.

[1239] TAP016 was a witness to three executions of persons who attempted to escape an SSD holding centre in North Hamgyong. See also NKDB, *Prisoners in North Korea Today*, pp. 283, 352, which finds no cases of executions in police holding centres and only one example of a labour training camp, where those who try to escape are executed.

[1240] Seoul Public Hearing, 22 August 2013, afternoon (01:57:00).

- Ms P was forced to carry logs of wood and cut grass during her imprisonment in a labour training camp in North Hamgyong Province. The prisoners were starving:

  "We were given … corn-based food, just enough to keep us alive. For young male inmates, [the food provided] was very insufficient, so male inmates would find worms or snakes in the field when they were working there. They would eat them alive to feel that feeling in the stomach." [1241]

- Another woman, who had also been forced to work in logging during her detention in a labour training camp, described how a lot of inmates were crushed by tree trunks as they tried to carry the large logs down the mountain slopes on their backs.[1242]

- In 2004, the witness was imprisoned in a labour training facility following her interrogation by the SSD in Sinuiju. She was forced to do farming and logging work starting at 5a.m. She received a lump of maize and five pieces of pickled radish per day. She injured herself and was limping so that she could not work as fast as the others. A guard punched her face, causing her to lose a tooth and pass out. After regaining consciousness, she immediately had to return to the field despite the fact that she could hardly stand on her own. As she was not able to do any work the guards started beating her again. She was eventually examined by a doctor, but not provided any medicine.

  The witness also recalled an incident, where a woman was caught eating raw rice grains she took from the field. She was taken to the cell block and beaten up. When the witness tried to help her, she was beaten up as well.

  Cases of diarrhea were quite common and one inmate in her cell died because she received no treatment. The victim's body was so emaciated that the guards could simply fold it over to carry it away with great ease. [1243]

- In 2000, the witness spent six months of imprisonment in an all-female labour training camp in North Hamgyong. There were 30 to 40 inmates crammed into a 28square metres cell. They had to sleep on the straw covered floor. The prison only supplied raw corn and salted soup. However, family members were allowed to visit and bring food. She had to carry sandbags and rocks. At night, inmates were also forced to march and run. Those who did not do well were beaten.[1244]

- A former labour training camp inmate witnessed a 7 month pregnant woman in her 20s being kicked many times in the stomach at a short term labour camp in Hyesan. During the night, the victim miscarried and the women in her room helped to deliver the baby. The baby was born alive, but after about 1 minute died. The witness wrapped the baby's body in a cloth and left it in the corridor. The body stayed there for a week until the guards took it away. [1245]

- A woman detained in another labour camp described a similar case. A heavily pregnant woman, who had been repatriated from China, was being kicked in the stomach until she started bleeding. The guards took her to the hospital. When she returned, her belly was no longer swollen and her eyes were swollen from crying. This led the witness to conclude that the woman lost the child.[1246]

[1241] Seoul Public Hearing, 21 August 2013, afternoon (01:47:10).

[1242] TJH028.

[1243] TGC001.

[1244] TBG017.

[1245] TSH039.

5. Executions

823. The DPRK continues to impose the death penalty. Capital punishment is provided for by article 27 of the DPRK Criminal Code. While the DPRK does not provide any comprehensive statistics, first-hand testimony collected by the Commission and other observers leads the Commission to find that a large number of persons are executed every year in the DPRK. In the vast majority of cases, the strict conditions and safeguards that article 6 of the ICCPR requires in relation to the death penalty are not observed.

824. The 2004 reform of the DPRK Criminal Code reduced the number of crimes that are subject to the death penalty in the DPRK. However, the Criminal Code's remaining death penalty provisions still cover a wide range of conduct that extends far beyond the 'most serious crimes' to which article 6 ICCPR limits the application of the death penalty. Moreover, some death penalty provisions are so broad and vaguely defined that they can easily be abused to suppress the exercise of human rights. Article 59 of the DPRK Criminal Code, for instance, allows the death penalty to be imposed inter alia for grave cases of participating in a demonstration with anti-state purposes. In grave cases, the death penalty may also be imposed on a "Korean national, who, under the control of imperialists, suppresses the people's struggle for national liberation or the struggle for the reunification of the country or betrays the nation by selling national interests to imperialists."[1247]

825. Since 2007, the scope of crimes subject to the death penalty has been once again expanded. In September 2007, the Standing Committee of the Supreme People's Assembly adopted an ordinance that contains an annex to the Criminal Code with new offences. Sixteen of the new offences are subject to the death penalty. In accordance with the decree, economic crimes such as "extremely grave" cases of smuggling precious metals or intentionally destroying state property are now subject to the death penalty. Most disturbingly, the 2007 decree contains a "catch all" clause, allowing for the sentence of death where a perpetrator commits multiple particularly grave crimes and the court considers that the perpetrator cannot be rehabilitated.

826. In 2009, the Ministry of People's Security issued a proclamation on behalf of the Government of the DPRK that prohibits various types of illegal trading in foreign currency. The proclamation envisages harsh criminal sanctions, including the death penalty. The same year, the death penalty was also extended to the crime of "disloyal destruction for anti-state purposes" under article 64 of the Criminal Code.

(a) Public executions in central places

827. Almost every citizen of the DPRK has become a witness to an execution, because they are often performed publicly in central places. In many cases, the entire population living in the area where the execution takes place must attend, including children. In other cases, executions are conducted in stadiums or large halls in front of a more selected audience.

828. The DPRK generally does not provide statistics on the number of executions carried out. In response to a question of the United Nations Human Rights Committee, the DPRK

[1246] TAP003.

[1247] See DPRK Criminal Code, article 67.

stated in October 2001 that only 13 executions were carried out between 1998 and 2001 and that the last public execution dated back to October 1992.[1248]

829. The Korea Institute for National Unification documented 510 public executions that it found to have taken place between 2005 and 2012 by gathering testimony from persons who fled the DPRK.[1249] The real number is probably even higher considering that relatively few people manage to depart from the provinces located farther from the Chinese border.

830. Executions are usually carried out in the DPRK by firing squads shooting multiple times at the condemned person. In more exceptional cases, the victim is hanged. Over the last couple of years, the authorities have increasingly resorted to killing the victims with automatic machine guns; presumably to maximize the terrorizing effect of the executions. Especially for young children and relatives of the victim, the experience of watching such killings is often so horrifying, that the witnesses must themselves also be considered victims of inhuman and cruel treatment in contravention of article 7 of the ICCPR.

- Mr Choi Young-hwa and Mr Kim Joo-il saw their first executions when they were 10 years old. In both cases, their teacher interrupted class to take the children to watch the executions.
- Mr Choi Young-hwa saw another execution at the age of 16. The manager of a factory was executed on grounds of espionage after his factory showed a dismal economic performance. He remembered being afraid and thinking that anyone could become a victim of such executions.[1250]
- At the age of nine, Mr Kim Hyuk witnessed his first public execution which was carried out in the vicinity of Political Prison Camp No. 25 near Chongjin. He recalled how he and the other children played with stray bullets they later found.[1251]
- Mr Lee Jae-geun witnessed at least 10 public executions during his 30 years in the DPRK. His whole work unit was required to travel to the execution site, where about 1,000 people in total were gathered. He recalled the case of one man, who was executed for criticizing Workers' Party of Korea leaders. Mr Lee described the purpose of forcing people to watch executions as follows:

  > *"They would take us to these public executions like a field trip, so that nobody dares think about disobeying the Party and disobeying the ideology of Kim Il-sung."*[1252]

831. Public executions were particularly common in the DPRK during the 1990s in line with orders from Kim Jong-il aimed at halting the breakdown of social order and state control. Many victims were executed for economic crimes such as embezzling goods from state factories or stealing food in order to survive. In many cases, the accused were summarily executed without trial. It was common that the victim's body was left at the execution site for a time, as a warning. The famine was a time of much arbitrary punishment in the DPRK.

- During the famine, Ms Jeon Jin-hwa saw several public executions in her hometown Hamhung (South Hamgyong Province):

[1248] CCPR/C/SR.1944, para. 24.

[1249] KINU, *White Paper on Human Rights in North Korea* (2013), pp. 105-106.

[1250] London Public Hearing, 23 October 2013, sessions 3 and 4.

[1251] Seoul Public Hearing, 22 August 2013, morning.

[1252] Seoul Public Hearing, 23 August 2013, morning.

> *"People who stole property that was considered belonging to the state and those who were caught stealing other people's property were publicly executed. Because of this, we didn't feel like we had control of our own life. We did not even have the right to end our own life."*[1253]

- Another witness from Hamhung remembered that people were executed for petty survival crimes such as stealing wires from factories or public installations.[1254]
- A man described how the way in which public executions were carried out, became more brutal in the late 1990s. When he saw his first execution as a nine-year old boy in Bukchang, South Hamgyong in the 1980s, the victim was placed in wooden frame covered with cloth. That way only the silhouette of the slumping body could be seen. During the famine, this practice was abandoned. Victims were simply tied to a pole and shot, so that everyone could see the bloodied body of the victim.[1255]
- A woman testified that she saw five public executions in her home village in North Hamgyong Province, including the execution of several farmers who had secretly slaughtered a cow to feed themselves. No trials preceded the killings. An official simply announced the crimes and then the victims were shot in the head.[1256]
- According to the witness, up to 20 people were executed each week for "anti-socialist" behaviour in Hyesan, Ryanggang Province. On several occasions, the military used tanks to block the streets, forcing people to congregate around the execution sites. After killing the victim with the initial shots, the firing squad aimed to shoot through the ropes that tied the victims at the neck, waist and feet to a wooden pole. As a result, pieces of body tissue flew everywhere.[1257]
- On one single occasion in July 1999, another witness recalled, KPA Military Security executed 12 persons in Hyesan for alleged anti-state activities, including the head of the city's management department. The entire population of Hyesan was required to gather and witness the public execution.[1258]

832. From 2000, after the social situation had somewhat improved and the state could ease the level of repression, fewer public executions were reported. However, the practice of public executions was never abolished. During the course of its Universal Periodic Review in December 2009, the Democratic People's Republic of Korea admitted itself that public executions were still being carried out in very exceptional cases involving very brutal crimes.[1259] Information received by the Commission indicates that more public executions have been carried out since then. In a number of cases, the victims were publicly executed for murder, drug trafficking, theft of state property and "human trafficking" (a charge which is at times also wrongly levelled against those who help others to voluntarily escape from the DPRK). Smugglers of foreign movies and other politically sensitive goods are also among the victims. Shortly before this report was finalized, the Commission received allegations about a string of executions that seem to have political purposes. These developments appear to be linked to the accession of Kim Jong-un to the office of the Supreme Leader and his consolidation of power. They raise questions as to his part in them.

[1253] Seoul Public Hearing, 22 August 2013, afternoon (00:30:41).

[1254] TBG017.

[1255] TJH038.

[1256] TBG001.

[1257] TSH038.

[1258] TAP006.

[1259] A/HRC/13/13, para. 88.

In December 2013, the authorities executed Mr. Jang Song-thaek, the uncle by marriage to the Supreme Leader Kim Jong-un. Until shortly before his death, Jang Song-thaek was the head of the Administration Department of the Central Committee of the Workers' Party of Korea. While the execution was not carried out in front of the general public, information about it was widely disseminated by DPRK state Media, both within and outside the DPRK. In addition, large parts of the population reportedly had to attend compulsory information events in order to be informed about the execution and the underlying reasons, as described by the government. According to the DPRK's own account, a special military court of the State Security Department convicted Mr Jang on charges of "state subversion attempted by the accused Jang with an aim to overthrow the people's power of the DPRK by ideologically aligning himself with enemies".[1260] The judgment reportedly "vehemently condemned him as a wicked political careerist, trickster and traitor for all ages".[1261] The death sentence was handed down only three days after Mr Jang's arrest. Footage of his arrest at a meeting of the Political Bureau of the Workers' Party of Korea was broadcast on DPRK television. The fairness of the procedure observed in this case is called in question by a report of the enlarged meeting of the Political Bureau, which is chaired by Supreme Leader Kim Jong-un. This report was made public three days before the judgment. It already concluded that Mr Jang "committed criminal acts baffling imagination" and that he had done "tremendous harm to our party and revolution".[1262] In violation of the right to seek pardon or commutation of the sentence under article 6 (4) of the ICCPR and the right to have the conviction and sentence reviewed by a higher tribunal according to law under article 14 (5) of the ICCPR, the death sentence was executed immediately after the special military court handed down its judgment.[1263] The Commission finds that the circumstances of the trial and execution of Jang Song-thaek, as per the DPRK's own account of it, involved many elements that contravened international human rights law. If such violations could affect one of the highest officials in the land, it is not difficult to appreciate the standards of law and justice that are afforded to ordinary citizens.

The Commission also received reports of executions and disappearances of close associates of Jang Song-thaek in the Workers' Party of Korea and the Ministry of Public Security.[1264] Among the victims of public executions are the most senior officials of the Administration Department of the Workers' Party of Korea, which used to be headed by Jang Song-thaek. In November 2013, Mr Ri Riong-ha, First Deputy Director of the Administration Department and Mr Jang Su-gil, Deputy Director of the Administration Department were reportedly executed on the basis of a judgment of the Special Military Court of the State Security Department. The reports are consistent with the pronouncement of the enlarged meeting of the Political Bureau of the Central Committee of the Workers' Party of Korea that the Party had "eliminated Jang and purged his group, unable to remain an onlooker to its acts any longer, dealing telling blows at sectarian acts manifested within the party".[1265] The judgment sentencing Jang Song-thaek to death specifically names Ri Riyong-ha as Jang's "trusted stooge".[1266] In the same direction points the 2014 New Year's statement of Supreme Leader Kim Jong-un, in which he indicated that the Party "took the resolute measure of removing the factionalists lurking in the Party".

[1260] See "Traitor Jang Song Thaek Executed", *KCNA*, 13 December 2013. Available from http://www.kcna.co.jp/item/2013/201312/news13/20131213-05ee.html.

[1261] Ibid.

[1262] See "Report on Enlarged Meeting of Political Bureau of Central Committee of WPK", *KCNA*, 9 December 2013. Available from http://www.kcna.co.jp/item/2013/201312/news09/20131209-05ee.html.

[1263] See "Traitor Jang Song Thaek Executed", *KCNA*, 13 December 2013. Available from http://www.kcna.co.jp/item/2013/201312/news13/20131213-05ee.html.

[1264] Relevant information was submitted by various credible sources.

The Commission received reports about a series of public executions conducted in August, October and November 2013 in various locations across the country. Many of the victims were reportedly executed for having been involved in the distribution of foreign movies and pornographic material. Most of the reported executions occurred after unconfirmed rumours were widely published in international media, which sought to link Kim Jong-un's wife Ri Sol-ju to a pornography-related scandal. In response to these rumours, the DPRK authorities reportedly issued stern warnings to its population not to trade in rumours and intensified a crackdown on 'anti-socialist materials', including pornographic material and foreign films.

In early 2010, a number of officials involved in the disastreous 2009 currency reform were executed.[1267] At the time that the executions were carried out, Kim Jong-un had already started gradually assuming affairs of state from his ailing father Kim Jong-il. According to testimony received, including from the Korea Institute for National Unification, one of the victims was Mr Pak Nam-gi, who was the Director of the Finance and Planning Department of the Central Committee of the Workers' Party of Korea, at the time that the currency reform was implemented.[1268] Mr Pak has not been seen since his reported execution and has been publicly described by an enlarged meeting of the Political Bureau of the Central Committee of the Workers' Party of Korea, which was chaired by Kim Jong-un, as a "traitor for all ages".[1269] This lends credence to the accuracy of the reports received.

833. In confidential interviews, eyewitnesses testified about the other recent cases of public executions to the Commission:[1270]

- In March 2013, the inhabitants of Songpyeong area of Chongjin City (North Hamgyong Province) were ordered to watch the execution of a man and a woman. Both adults and children had to attend, without exception. After an official announced to the crowd that the victims had produced and sold large amounts of methamphetamine, the victims were beaten and tied to a pole. Then a firing squad of six officials executed them using machine guns. Other public executions were conducted in the same place in 2007 (for human trafficking), 2008 (for theft from a state factory) and 2009 (for murder).
- In the spring of 2012, a woman was publicly executing for having killed her lover in Bukchang County, South Pyongan Province.
- In November 2011, four persons were publicly executed for having produced and sold drugs in Kyonghung County, North Hamgyong Province.
- In June 2011, people were forced to watch the public execution of a woman for murder in Kumya County, South Hamgyong Province.

[1265] See "Report on Enlarged Meeting of Political Bureau of Central Committee of WPK", *KCNA*

[1266] See "Traitor Jang Song Thaek Executed", *KCNA*.

[1267] On the currency reform, see also section IV.D.

[1268] KINU, Seoul Public Hearing, 21 August 2013, afternoon.

[1269] See "Traitor Jang Song Thaek Executed", *KCNA*. The same term was used to describe recent public execution victim Jang Song-thaek

[1270] TBG028, TBG030, TBG032, TLC039, TLC042.

- In 2010, a woman who had sold movies and soap operas produced in the ROK was publicly executed in Hamhung, also South Hamgyong.
- In October 2009, a man was publicly executed in Hoeryoung, North Hamgyong Province for having been in contact with ROK authorities.

(b) Executions in places of detention

834. The Commission also finds that a large number of executions are carried out in places of detention in the DPRK. In some cases, the execution is based on a judicial sentence. In other cases, summary execution is imposed without any known trial or judicial order, apparently to uphold discipline and institutional rules. The entire population of the detention facility is usually obliged to attend and watch such executions. This appears to be done to instil fear and to promote the subjugation of the prisoners.

- Former political prison camp guard, Mr Ahn Myong-chol testified that the camp authorities carried out executions, when someone tried to escape, destroyed camp property or when things were out of control: "*We would kill or would execute ... one inmate to set an example for the rest of the inmates.*" The decision to execute was always taken by the investigation bureau that the State Security Department maintained in the camp, without any involvement of a court of law. The entire camp population had to watch. The number of executions per camp fluctuated, in some years as many as 20 people were publicly executed.[1271]
- Ms Kim Hye-sook witnessed numerous executions in Political Prison Camp No. 18. Prisoners were executed for disobeying guards orders, tying to escape or venturing into the guards' living quarters to scavenge for leftover food.[1272]
- In 2007, two men were executed in Political Prison Camp No. 15 at Yodok according to a former inmate. The men had left their living areas, because they were starving and wanted to find food in the mountains. After a large search operation was mounted by the camp authorities, the men were found and summarily executed in front of the other inmates.[1273]
- Mr Kim Hyuk witnessed four public executions during the span of only three months he spent at *Kyohwaso* No. 12 at Jonggo-ri (North Hamgyong Province). One victim was summarily executed for stealing food from the prison's storage and another had tried to escape. Two others had been sentenced by a court to execution, because they had committed several serious crimes.[1274]

835. Inmates of political and ordinary prison camps are particularly vulnerable to secret executions. They are considered to have lost their basic rights, and, in the case of political prison camp inmates, have no contact with the outside world. The killing of prisoners can also be easily concealed because the bodies of prison camp inmates are never returned to their family. The Commission received credible first-hand information about instances of secret summary executions carried out in prison camps and interrogation detention facilities.

- From 1998, a large number of prisoners of Political Prison Camp (*kyohwaso*) No. 12 at Jonggo-ri were secretly executed. The victims were mostly people who had bad

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[1271] Seoul Public Hearing, 21 August 2013, afternoon (00:26:30).

[1272] Interview by video-conference.

[1273] TLC008.

[1274] Information provided in a more detailed confidential interview preceding Mr. Kim's public hearing testimony.

songbun and/or had been imprisoned for politically sensitive crimes. Some victims may also have been targeted because they complained about prison conditions or disobeyed orders. According to eyewitness testimony, the victims were taken out of their cell at night and brought one after the other to a room, where prison camp officials and an MPS officer from Pyongyang presented the victim with false accusations. Immediately thereafter, prison guards strangled the victim to death using a metal wire. Work unit leaders from among the prisoners were assigned to remove the bodies and take them to a furnace located a few kilometres away from the main prison block. Such killings occurred at regular intervals, and every time several prisoners were killed.[1275]

In 1997, secret executions targeting perpetrators of politically sensitive crimes appear to have been carried out in an ordinary prison camp that was located in Taehun, South Pyongan Province and was closed later that year. Three to five victims per week were shot during the night or early morning at a site located about 1.5 km from the main prison block.[1276]

Both sets of secret executions could be linked to a directive that was allegedly issued by Kim Jong-il in 1997 and instructed the security apparatus to eliminate all elements who are "diseased in mind".[1277]

- Between February 1993 and 1998, around 250 military officers who had studied at the Frunze Military Academy in the Soviet Union were reportedly executed. Some among them had apparently hatched plans to carry out a coup d'état. The purge was led by the KPA Military Security Command. The victims were executed without trial, after a determination of their guilt was made by security officials. The families of some victims were sent to political prison camps. Other families were apparently spared from collective punishment, because they represented some of the country's most influential families. [1278]
- Former guards have presented information indicating that inmates of Political Prison Camp No. 13 have been secretly executed. A former guard in Camp No. 13 described that he had to transport political prisoners to secret executions sites in the mountains. The victims had to shovel their own graves before other security officials killed them by a hammer blow to the back of the skull.[1279] Ahn Myong-chol indicated that a mountain near the camp was used for secret executions and that

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[1275] These killings are also reflected in a book received as Exhibit S29 during the testimony of Mr Kim Gwang-il at the Seoul Public Hearing, 24 August 2013, morning. See *The Third Way, Prima Facie Evidence: Chonko-ri Prison* (2012), pp. 76 ff.

[1276] TSH035.

[1277] The reported wording of the directive, allegedly issued on 19 September 1997 and known as the 919 Directive, is restated in *The Third Way, Prima Facie Evidence: Chonko-ri Prison*, p. 75. This directive was also referred to by Mr Yoon Nam-geun of the National Human Rights Commission of Korea [Republic of Korea] at the Seoul Public Hearing, 22 August 2013, afternoon.

[1278] Former DPRK military officers provided detailed information to the Commission in confidential interviews. In his memoirs, *Hwang Jang-yop Hoegorok* (Hwang Jang-yop's memoirs) (Published in Korean by Zeitgeist, 2006, translated by Daily NK), Hwang Jang-yop, the highest-ranking official to flee the DPRK, also recalled that DPRK officers who had studied in Russia were being shot by the KPA Military Security Command for having plotted against Kim Il-sung. One of Mr Hwang's interpreters was arrested and disappeared in relation to the Frunze purge. Additional testimony from former DPRK officials is reflected in Ken E. Gause, "Coercion, Control, Surveillance, and Punishment", pp. 121, 122. See also Ralph Hassig and Kongdan Oh, *The Hidden People of North Korea: Everyday Life in the Hermit Kingdom* (Rowman & Littlefield Publishers, 2009), p. 176.

[1279] TJH041.

shots from that area could sometimes be heard at night. He also noted that he witnessed corpses being found when construction was conducted in the area.[1280]

6. Medical experiments

836. The Commission has investigated allegations brought to its attention, which suggest that political prisoners were deliberately killed in medical experiments conducted by state authorities to test the impact of chemical and biological weapons.[1281] Similar allegations have been received regarding medical experiments performed in closed hospitals for persons with disabilities.

837. The Commission considers that particular care is called for in verifying the accuracy of such serious allegations. On the basis of the information available when this report was finalized, the Commission is not in a position to confirm whether any such medical experiments were conducted. Further proof would be required to meet the rigorous standard of proof applied by the Commission. Nevertheless, the Commission records the allegations for future investigation and consideration.

7. Principal findings of the commission

838. The Commission finds that the police and security forces of the Democratic People's Republic of Korea systematically employ violence and punishment that amount to gross human rights violations in order to create a climate of fear that pre-empts any challenges to the current system of government and to the ideology underpinning it. Fear is the keystone that ultimately holds up the edifice of the current state structure in the Democratic People's Republic of Korea. The institutions and officials involved are not held accountable. Impunity reigns.

839. Gross human rights violations in the Democratic People's Republic of Korea in respect of detention, execution and disappearances are characterized by a high degree of centralized coordination between different parts of the extensive security apparatus. The State Security Department, Ministry of People's Security and the Korean People's Army Military Security Command regularly subject persons accused of political crimes to arbitrary arrest. This falls short of the legal requirements set out by international law and even under the Democratic People's Republic of Korea's own laws. Subsequently, those so arrested are typically held incommunicado for prolonged periods of time. Their families are not informed about their fate and whereabouts. Persons accused of political crimes therefore become victims of enforced disappearance. Making the suspect disappear is a deliberate feature of the system that serves to instil fear in the population that anyone who does not show absolute obedience can disappear at any time for reasons solely determined by, and known to, the authorities.

840. The use of torture is an established feature of the interrogation process in the Democratic People's Republic of Korea, especially in cases involving political crimes. Starvation and other inhumane conditions of detention are deliberately imposed on suspects to increase the pressure on them to confess and to incriminate other persons.

841. Persons who are found to have engaged in major political crimes disappear, without trial or judicial order, to political prison camps (*kwanliso*). There, they will be incarcerated and held incommunicado. Their families will not be informed of their fate even if they die.

[1280] Confidential interview with Mr Ahn.

[1281] Such allegations were, inter alia, conveyed in the public hearing testimony provided by Mr. Stuart Windsor (London Public Hearing, session 5) and Mr. Joseph S.Bermudez Jr. (Washington Public Hearing, 31 October 2013, afternoon).

In the past, it was common that the authorities sent entire families to political prison camps for political crimes committed by close relatives (including forebears to the third generation) on the basis of the principle of guilt by association. Such cases still occur, but appear now to be less frequent than in past decades.

842. The unspeakable atrocities committed against the inmates of the *kwanliso* political prison camps of the DPRK resemble the horrors of camps that totalitarian states established during the twentiethh century. In the political prison camps of the Democratic People's Republic of Korea, the inmate population is gradually eliminated through deliberate starvation, forced labour, executions, torture, sexual violence including rape and a denial of reproductive rights enforced through punishment, forced abortion and infanticide. The Commission estimates that hundreds of thousands of political prisoners have perished in these political prison camps over the course of more than five decades.

843. Although the authorities in the Democratic People's Republic of Korea claim that the camps have never existed and do not exist and have denied outsiders access to the areas where they are situated, this claim is shown to be false by the testimony of former guards, inmates and neighbours. Satellite imagery proves that the camp system continues to be in operation. While the number of political prison camps and inmates has decreased due to deaths and some releases, an estimated 80,000 to 120,000 political prisoners are currently detained in four large political prison camps and a residual detention complex that remains from a fifth earlier camp.

844. Gross violations are also being committed in the ordinary prison system, which consists of ordinary prison camps (*kyohwaso*) and various types of short-term forced labour detention camps. The vast majority of inmates are victims of arbitrary detention, since they are imprisoned without trial or on the basis of a trial that grossly fails to respect the due process and fair trial guarantees set out in international law. Furthermore, many ordinary prisoners are, in fact, political prisoners, who are detained without a substantive reason compatible with international law. Prisoners in the ordinary prison system are systematically subjected to deliberate starvation and illegal forced labour. Torture, rape and other arbitrary cruelties at the hands of guards and fellow prisoners are widespread and committed with impunity.

845. As a matter of State policy, the authorities carry out executions – with or without trial; publicly or secretly – to punish political and other crimes that are often not among the most serious crimes. The policy of regularly carrying out public executions serves to instil fear in the general population. Public executions were most common in the 1990s. They became less common after 2000. However, they continue to be carried out today. Shortly before this report was finalized, there was an apparent spike in the number of politically motivated public executions.

F. Enforced disappearance of persons from other countries, including through abduction

846. Enforced disappearances occur when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of government or by organized groups of private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to

acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.[1282]

847. Article 1 the Declaration for the Protection of All Persons from Enforced Disappearances states that:

> 1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
>
> 2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

1. Periods and types of abductions and other enforced and involuntary disappearances

(a) 1950-1953: abduction of Republic of Korea civilians during the Korean War

848. During the Korean War, DPRK forces took thousands of people from their homes or places near their homes in the South of Korea to the North. The kidnapping and relocation to the North of non-military persons residing south of the 38th parallel during the Korean War from 25 June 1950 to the signing of the Armistice on 27 July 1953, constitute abductions of civilians. These victims are often referred to as Korean War abductees.

849. The number of ROK civilians captured and forcedly removed to the North during the Korean War is not precisely known. However, estimates range between 80,000 and 100,000.[1283] After several years of intense study on the matter, the Korean War Abductees' Family Union (KWAFU), a civil society organization dedicated to ascertaining the whereabouts and current status of ROK citizens abducted during the war, on the basis of investigations conducted by its research institute, the Korean War Abductees Research Institute (KWARI), compiled records of 96,013 Korean War abductees.[1284] These records are based on detailed lists of abducted persons compiled by the Government of the Republic of Korea and a victims' family association in the immediate aftermath of the abductions. The list was supplemented by other sources and testimony from family members and other witnesses.

850. The abductions were widespread and organized, indicating that they were planned and conducted in line with State policy. From the list of 96,013 submitted by KWAFU, the statistics point to the abductions being a planned operation to recruit young men, with experience in the cultivation of farmland, construction and other technical tasks beneficial to the building and maintenance of the socialist state infrastructure of the DPRK.[1285] The

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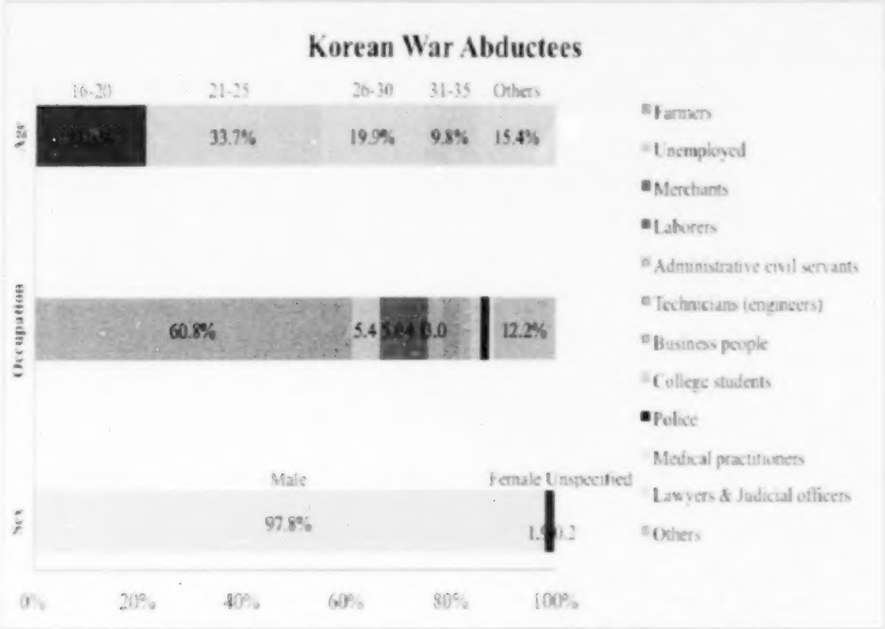
[1282] *Declaration for the Protection of All Persons From Enforced Disappearances*, adopted by General Assembly resolution 47/133 of 18 December 1992.

[1283] Submission to the Commission: HRNK dated 1 November 2013, p. 79; KINU, *White Paper on Human Rights in North Korea* (2012), p. 488; NHRCK, Seoul Public Hearing, 22 August 2013, afternoon.

[1284] Submission to the Commission: Korean War Abductees Family Union (KWAFU).

[1285] Submission to the Commission: KWAFU.

information provided to the Commission reveals the following statistics about the composition of the abducted individuals:[1286]



851. The abductions were carried out by soldiers of the Workers' Party of Korea. Soldiers took citizens from their homes and workplaces, generally on the understanding of detaining them for questioning, but did not allow them to return to their homes.

- At the Seoul Public Hearing, Mr Kim Nam-joo told the Commission of the abduction of his father who was an electrician in Chungmu Ro. Two men posing as civilians entered the electrical store of Mr Kim's father asking for him. When Mr Kim's father appeared, he was taken by three Korean People's Army (KPA) officers and was not seen again. DPRK officers later visited Mr Kim's home in search of Mr Kim's elder brothers though they were able to evade capture. Mr Kim told the Commission: "*So once a happy family, we were broken. ... The pain that I experienced in the past still persists after 60 years. We still live in that pain. I still cry from the memories.*"[1287]

852. In addition to the large numbers of young men targeted for their practical skills and expertise, there were also targeted abductions of skilled professionals, including persons with training in medicine, law and governance. Persons who served in the security and intelligence agencies of the ROK were also targeted. According to KWAFU 2,919 civil servants, 1,613 police, 190 judicial officers and lawyers, 424 medical practitioners were among the abductees.

- The son of an abducted police officer, Mr Choi Gwang-seok told the Commission that his father hid his uniforms and anything that identified him as a police officer for fear of being targeted. However, despite his best efforts he was captured and was never seen by his family again.[1288]

[1286] Korean War Abduction Research Institute (KWARI), *People of No Return: Korean War Abduction Pictorial History* (2012), pp. 16-18.

[1287] Seoul Public Hearing, 23 August 2013, afternoon (02:55:00).

> *"[M]y father, as you know, was a member of the Security Department, which was like a police. My father asked me to hide his police uniform and relevant documents in the basement. … I was in the basement, hiding the documents and the uniform and I was able to hear the conversation that was going on between my dad and the communists who came looking for him. And they were asking my father to go with them. They took my father away. The last time that I heard my father, my father was saying good-bye to his mother, who was my grandmother. That was the last time I heard my father's voice."*[1289]

- Ms Park Myung-ja, perhaps the last remaining surviving abductee outside the DPRK, recounted her experience of being taken to the North along with half of the medical staff at the hospital where she had been working during the Korean War. Ms Park told the Commission of the capture of the Seoul National University Hospital by DPRK forces and the abduction of half the staff for the purpose of establishing a hospital in Hamhung, South Hamgyong Province:

> *"We were passing through a mountainous area. We were very exhausted – doctors, nurses and the administrative staff. Our legs were exhausted and they said anybody who was exhausted should come out. Those who held [up] their hands came out and they were killed. We were so scared that we had no choice but to follow them. Our legs were weak. They kept beating us up so that we would keep walking."*[1290]

853. Historical documents provided to the Commission by KWAFU show that the abductions were not spontaneous violations, but followed specific objectives to gain labour and skills set by central-level institutions of the DPRK. Documents from the DPRK contain various demands for persons with particular skills and expertise.[1291] For example, in an urgent request issued by the Ministry of National Protection to the Workers' Party of Korea on 6 June 1950, shortly before the DPRK made incursions into the ROK, categories of personnel such as engineers, pharmacists, and doctors were requested.[1292] Additional documents from the ROK government and wartime telegrams of foreign governments that have since been disclosed detail information known to these governments about the abduction of civilians during the war.[1293] For example, a declassified Russian document reveals that the Russian Ambassador to the DPRK sent a translation to Russia on 17 August 1950 of a DPRK document dated 17 July 1950, outlining the decision to transfer Seoul citizens to farms in the North.[1294]

854. The underlying objectives of the wartime abductions are believed to be the recruitment of labour and expertise, while simultaneously draining the capacity of the

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[1288] Seoul Public Hearing, 23 August 2013, afternoon (03:01:00).

[1289] Seoul Public Hearing, 23 August 2013, afternoon (03:00:00).

[1290] Seoul Public Hearing, 23 August 2013, afternoon (02:13:30).

[1291] For example: "Regarding Bringing Intellectuals from South Korea" in *Kim Il-sung's Collected Works*, vol 4, 31 July 1946; "Yeonchun Resident Project Report", 5 August 1949; "The Demand for Key Technical Personnel", 6 June 1950; "Special treatment for Experts", 27 June 1960; "Gang Won Internal Affairs No 3440", 5 September 1950.

[1292] "Order issued by the DPRK Ministry of National Protection entitled 'The Demand for Key Technical Personnel'", 6 June 1950, as provided by KWAFU.

[1293] For example: "A Secret Telegram to the US from Muccio, the American Ambassador to Korea" dated 19 December 1951; "A telegram by the American Embassy in Japan", dated 13 October 1950; "The 18th Decision of the North Korean Army Committee: Classified Russian Document", dated 17 August 1950.

[1294] KWARI, *People of No Return: Korean War Abduction Pictorial History* (2012), p. 47.

South. The need for labour and expertise in the North grew as a result of the depletion of its own population as a result of the war, and from the exodus of nationals persecuted by the government of the DPRK in the early days of independence.[1295] After the establishment of the DPRK north of the 38th parallel, after the independence from the Japanese, the newly created socialist state appropriated private property and took harsh action against persons who may have posed a threat to the new state such as landowners, intellectuals and religious people. As a result, large numbers of these people fled to the South causing sudden labour shortages. The abductions also served to cause chaos and confusion in the South, to make post-war rehabilitation more difficult due to the shortages of skilled professionals and youth, and to propagate the socialist dream by portraying the abductions as voluntary defections. A report issued on 5 August 1949 (before the war) shows the DPRK state policy to "*divide and destroy the anti-communist group [in the South] by bringing them to the North.*"[1296]

855. The Armistice Agreement instructed the Commanders of each side to permit and assist civilians who had crossed the demarcation line after 24 June 1950 to return to their home territory if they so desired.[1297] International humanitarian law also requires states to repatriate civilians interned during an armed conflict.[1298] Despite these obligations, no civilians from south of the demarcation line prior to 24 June 1950 residing in the North at the end of the Korean War were assisted in returning to the South. Since the Korean War, the DPRK has consistently denied any war-time abductions, claiming that a number of people had voluntarily come to the North.[1299] For example, on 30 June 2013, Kim Jong-un delivered the following message via the official newspaper of the DPRK, *Rodong Sinmun*:

[1295] See section III.

[1296] "Yeonchun Resident Project Report", 5 August 1949, as provided by KWAFU.

[1297] The Korean Armistice Agreement, article III, section 59 (a): All civilians who, at the time this Armistice Agreement become effective, are in territory under the military control of the Commander-in-Chief, United Nations Command, and who, on 24 June 1950, resided north of the Military Demarcation Line established in this Armistice Agreement shall, if they desire to return home, be permitted and assisted by the Commander-in-Chief, United Nations Command, to return to the area north of the Military Demarcation Line; and all civilians who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, and who on 24 June 1950, resided south of the Military Demarcation Line established in this Armistice Agreement shall, if they desire to return home, be permitted and assisted by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers to return to the area south Military Demarcation Line. The Commander of each side shall be responsible for publicizing widely throughout the territory under his military control the contents of the provisions of this Sub-paragraph, and for calling upon the appropriate civil authorities to give necessary guidance and assistance to all such civilians who desire to return home.

[1298] Article 134 of the 1949 Geneva Convention IV, which the DPRK has ratified, provides: "The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation. The same obligation is also entrenched in customary international humanitarian law." See ICRC Study, rule 128.

[1299] For example, during the Armistice negotiations, the North denied having taken the civilians, "*you [UN Command] said that when our army advanced to the south we took people to the north; but, as I said yesterday, there was no necessity for us to do so, and in fact we did not do so*": Military Armistice Conference Minutes, tenth session 2 January 1952, transcript of the General Headquarters United Nations Command Advance, in KWARI, *People of No Return: Korean War Abduction Pictorial History* (2012), p. 57; At the Universal Periodic Review of the DPRK at the thirteenth session of the Human Rights Council, the DPRK delegate advised the "issue of abduction does not exist", A/HRC713/13, 4 January 2010; "Jogukjeonseon namjoseondanggukui 'jeonsirabbukja' gyujeongeul danjoe" (South Korean Authorities Flayed for Branding Pro-Reunification Champions as

> "[The Korean War abductees] fuss under the current puppet ruling quarters far surpasses the predecessor's provocation. … As for the defectors, they were not forced to do, but made a patriotic heroic attempt according to their political belief, desire for reunification and national conscience."[1300]

856. In 1956, through the International Committee of the Red Cross, the DPRK was requested to advise about the fate of the Korean War abductees, who were referred to as "displaced persons". Of the 7,000 names provided at that time, information was received regarding only 337 persons.[1301] Requests for information about larger numbers of abductees have been met with counter-requests to remove any reference to "abduction" or "abductees". In 2012 KWAFU submitted the list of 96,013 names of Korean War abductees whose fate is currently unknown to the International Committee of the Red Cross, requesting their assistance in uncovering details of the abductees' fates. To date no response from the DPRK has been received. Given the passage of time since the abductions, it is unlikely that many of the Korean War abductees remain alive. Submissions have also been made to the Working Group on Enforced and Involuntary Disappearances (WGEID). However due to a lack of cooperation by the DPRK, the Working Group has not been able to confirm any information.

857. The Korean War abductees faced significant discrimination after arriving in the DPRK and were not treated well. Even those who had been handpicked for their special skills and expertise came to be viewed as antagonists rather than assets. Those who did not wholeheartedly accept the ideology of the state were particularly severely punished and closely monitored. Most were relegated to work in remote mining areas. Many disappeared into labour camps and political prisons.[1302] On 5 September 1950, after the forcible removal to the North of approximately 66,000 civilians from the South, the DPRK internal affairs office in Gang Won issued a memorandum to the district and city Internal Affairs stations about how the euphemistically called "liberated Seoul citizens" were to be treated. The memo instructs that they are to be searched, interrogated and monitored. The memorandum instructs each factory, mine and workplace at which the former Seoul citizens were working to make a list of the "*recruited labourers*" under their jurisdiction, regularly question them and "*watch their every movement, lest any undesirable behaviour occur, and in the case of any runaways, efforts should be made for their immediate arrest.*"[1303]

- The Commission heard from a witness whose uncle, a trained boxer, had been abducted for his physical skill and trained as a spy. As surveillance on the remaining family in the ROK intensified, the boxer's sister and two brothers defected to the North. The boxer lived with one of his brothers, while the second brother and sister established their own respective families in the North. The extended family lived relatively well in Pyongyang, until the boxer's boss in the spy department left the DPRK for the ROK. After this, the boxer was executed along with everyone in the department. The brother who lived with the boxer was also executed. The brother who lived separately with his own family, attempted suicide in an effort to spare his family from being punished under the guilt-by-association policy. It is believed this

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"Wartime South Korean Abductees"), KCNA, 28 June 2013. Available from http://www.kcna.co.jp/calendar/2013/06/06-28/2013-0628-012.html; "DPRK Insists there were no Korean War Kidnappings", *New Focus International*, 29 March 2013. Available from http://newfocusintl.com/Korean-war-kidnappings/.

[1300] "Ridiculous [War Abductees] fuss", *Rodong Sinmun*, 30 June 2013.

[1301] Submission to the Commission: KWAFU.

[1302] Witnesses at the Seoul Public Hearing, 23 August 2013, afternoon; TSH030.

[1303] "Gang Won Internal Affairs No 3440", 5 September 1950, as provided by KWAFU.

brother and his entire family were later killed. The boxer's sister and sister's daughter (the witness) were sent to a remote mining district.[1304]

- The daughter of an abducted ROK civilian told the Commission of the purge of ROK citizens to mountainous regions in 1977/78. Her family had lived in a city area as her father had been a teacher at a college. However, in 1977, they were exiled with many other families originating from the ROK to a remote mountainous area. She said, "*after the exile, we were treated as less than human*".[1305]

858. Korean War abductees were denied not only freedom to leave the DPRK and return to the ROK, but also denied the right to communicate with their families in the South or authorities of the Republic of Korea. Most married (or remarried if they had been married in the ROK), and as they were relegated to the lowest rank of *songbun*, they and their descendants were denied educational and employment opportunities for generations. Several witnesses told the Commission of their *songbun* categorization into the "hostile" class.[1306]

859. The daughter of a Korean War abductee, explained that her husband forced her to divorce him after he discovered that her father was born in the South.[1307]

860. The abduction of ROK civilians appears to have been conducted in accordance with a plan. DPRK and foreign documents reveal the need for labour, the plan to relocate ROK nationals to the North – particularly to work on farms – and describe how they were to be treated. Witness testimony presented to the Commission points to the large scale forcible relocation of persons, and the targeting of particular professionals. The fact that these abductions were carried out by the Korean People's Army (KPA) further reinforces the conclusion that the wartime abductions of civilians were carried out on the instruction of the then Supreme Commander of the KPA Kim Il-sung. The Commission finds that the KPA, taking advantage of the circumstances of war to forcibly take civilians to the North, upon the instruction of Kim Il-sung, and at the cessation of the war, failed to provide those civilians with the opportunity to return to the ROK.

(b) 1953: denial of repatriation to prisoners of war from the Korean War

861. At the time of the end of the Korean War, an estimated 82,000 members of the Republic of Korea Armed Forces were missing.[1308] Estimates of those taken as prisoners of war (POWs) and detained in the DPRK, or other countries allied to the DPRK, range between 50,000 and 70,000.[1309] According to the Soviet Union's protocol of a meeting between Stalin, Kim Il-sung, Zhou Enlai and other senior officials, in September 1952 the DPRK held 35,000 ROK POWs.[1310] Kim Il-sung conveyed to Stalin that during the Armistice negotiations, the DPRK had only acknowledged to have taken about 7500 ROK

[1304] TSH030.

[1305] TSH032.

[1306] TSH030, TBG001, and witnesses at the Seoul Public Hearing, 23 August 2013, afternoon.

[1307] TBG001.

[1308] The United Nations Command at the time of the armistice estimated 82,000 of the Korean Armed Forces to be missing: KINU, *White Paper of Human Rights in North Korea* (2013), p. 541.

[1309] Heo Man-ho, "North Korea's Continued Detention of South Korean POWs since the Korean and Vietnam Wars", *The Korean Journal of Defence Analysis*, vol. 14, No. 2 (Fall 2002), p. 142; Wada Haruki, *The Korean War* (New York, Rowman & Littlefield Publishers, 2013), p. 289.

[1310] Soviet Union verbatim "Record of a Conversation between Stalin, Kim Il Sung, Pak Heon-yeong, Zhou Enlai, and Peng Dehuai", 4 September 1952, History and Public Policy Program Digital Archive, Translated into English from the original by Gary Goldberg. Available from: http://digitalarchive.wilsoncentre.org/document/114936.

soldiers as POWs. . According to Kim Il-sung, there were an additional 27,000 POWs, whose existence had not been revealed to the other side or the media. In the same meeting, Chinese General Peng Denhuai, who commanded the Chinese volunteer forces in the DPRK, indicated that since Chinese forces had entered the war, they had taken 40,000 POWs from the ROK.[1311]

862. Only 8,343 POWs were returned to the ROK in the immediate aftermath of the armistice between April 1953 and January 1954.[1312] On the basis of the discrepancy between this figure and in the numbers reported by Kim Il-sung and Peng Denhuai to Stalin, the Commission finds that at least 50,000 POWs from the ROK were not repatriated.

863. It is estimated that approximately 500 survivors among them are still being held in the DPRK.[1313] They have 400 POW family members who live in the ROK or elsewhere outside the DPRK.[1314]

864. International Humanitarian Law requires that prisoners of war must be released and repatriated without delay after the cessation of active hostilities.[1315] In addition, the Armistice Agreement established express obligations as to when and through which mechanisms repatriation of POWs was to occur.[1316] By signing the Armistice Agreement, each State party agreed to:

> [W]ithin sixty (60) days after this agreement becomes effective each side shall, without offering any hindrance, directly repatriate and hand over in groups all those prisoners of war in its custody who insist on repatriation to the side to which they belonged at the time of capture.[1317]

865. The Agreement detailed how the Red Cross would facilitate the repatriation efforts. The Committee for Repatriation of Prisoners of War would mediate any disputes as to the arrangements.[1318] The Committee for Repatriation of Prisoners of War was to be dissolved by the Military Armistice Committee upon completion of the programme of repatriation of prisoners of war.[1319] Despite these obligations under international law, thousands of ROK Prisoners of War were not repatriated, nor fairly offered the prospect of repatriation, by the DPRK.

866. It is clear from contemporary discussions between leaders from the DPRK, the Soviet Union and China, found in archived documents, that Kim Il-sung did not intend to

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[1311] It is unclear from the conversation about the ROK POWs whether the approximately 8000 ROK POWs that have been listed for repatriation are in addition to the 40,000 held by Chinese forces, or are 8000 of the 40,000 ROK POWs held by Chinese forces.

[1312] KINU, *White Paper of Human Rights in North Korea* (2013), p. 541.

[1313] See KINU, *White Paper of Human Rights in North Korea* (2013), p. 541, and Seoul Public Hearing witness Mr Yoo Young-bok, 23 August 2013, afternoon (00:20:30). Institute for Unification Education "Issue of Abductees and POWs" 2012 cites the number of surviving POWs to be approximately 560.

[1314] KINU, *White Paper of Human Rights in North Korea* (2013), p. 542.

[1315] Article 118, first paragraph, of the 1949 Geneva Convention III, which the DPRK has ratified, provides: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities". Building on state practice harkening back to the Hague Regulations of 1899 and 1907, this obligation also emerges from Customary International Humanitarian Law. See *International Committee of the Red Cross, Customary International Humanitarian Law*, vol.1 (Cambridge, Cambridge University Press, 2005), p. 451 [Rule 128].

[1316] The Korean Armistice Agreement, article III, 51 – 58.

[1317] The Korean Armistice Agreement, article III, 51 (a).

[1318] The Korean Armistice Agreement, article III, 56 (b).

[1319] Armistice Agreement, article III, 56 (c).

return all the prisoners of war in his control. Rather, the DPRK had concealed the existence and whereabouts of the majority of ROK POWs by transferring them to KPA unit. Kim Il-sung reported to Stalin that the existence of the POWs thus transferred had been kept a secret from observers :

> "According to the list which we have submitted we have taken a total of 12,000 men prisoner, of which 4,416 are foreigners and the rest South Koreans. Among the prisoners are 300 American pilots, of which more than 30 are officers. *About 27,000 South Koreans have transferred to units of the Korean People's Revolutionary Army. These POWs have not been reported in the press.*"[1320] (emphasis added)

867. The Commission received testimony from several South Korean POWs who were not repatriated but managed to escape the DPRK in their advanced years. By September 2012, 80 former Korean War POWs have returned to the ROK.[1321] According to the testimonies received, and reports on the issue, POWs captured in the early years of the war received re-education (ideological training) for several months before being enlisted in the KPA,[1322] being told that "*they will now be participating in liberating ROK*".[1323]

868. A minority voluntarily joined the DPRK army. A former POW explained that as he joined the Korean People's Army voluntarily working in a hospital for the injured, he was no longer treated as a POW and was afforded the same benefits as DPRK soldiers after the war.[1324] Another former POW told the Commission that those who joined the DPRK voluntarily after capture had their documentation papers were marked with "no 39", and they were promised positions of responsibility when the South fell.[1325]

869. For the vast majority however, being (non-voluntarily) enlistees in the KPA meant being regrouped into "construction brigades". These were composed entirely of POWs, who were forced to work in coal mines, factories and farm villages in the northern-most parts of the country.[1326] POWs were kept in camps at these forced labour sites during and after the war, until 1956.[1327] After the signing of the armistice, POWs who had been in the custody of the Chinese and Soviet forces were handed over to the DPRK and ended up in the same situation.[1328]

870. Each person in that position who gave evidence to the Commission told of how the opportunity to be repatriated was not fairly offered to them after the armistice in 1953.

- Mr Yoo Young-bok, who became a POW as a young man and only managed to escape after more than 50 years in the DPRK, testified that repatriation was never offered him. Instead, he and 600 other POWs were forced to work in a mine in North Pyongan Province:

  "We were forced to work this mine and we said we are South Korean, POWs, why are we not being exchanged, why are we working in the mines, we asked these questions. And the North Koreans said they don't know why and they just said we

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[1320] Kim Il-sung, as cited in the Soviet Union's verbatim "Record of a Conversation between Stalin, Kim Il Sung, Pak Heon-yeong, Zhou Enlai, and Peng Dehuai", 04 September 1952, History and Public Policy Program Digital Archive, Translated by Gary Goldberg. Available from http://digitalarchive.wilsoncentre.org/document/114936.

[1321] KINU, *White Paper of Human Rights in North Korea* (2013), p. 542.

[1322] TBG015 and TJH029.

[1323] TBG008.

[1324] TJH030.

[1325] TBG021.

[1326] TBG007, TBG008, TBG015, TBG021, TJH029, TJH016.

[1327] TBG021, TBG015.

[1328] TJH029.

> *should do what we are told to do. ... we thought this wouldn't last long. We thought that relations between South and North Korea would improve. And because all the officers were alive, and because the South Korean government was there, because the president was there, we thought they would one day come looking for us trying to save us. So we decided to be patient and wait... but 5 decades have passed and nobody came looking for us and tried to save us. And North Korea just used us."*[1329]

871. Others spoke of being fearful of truthfully responding to questioning about their desire to be repatriated for fear of persecution. In one instance, a witness described how those who had answered affirmatively, indicating they wished to be repatriated, were shot.[1330] The majority however testified that they were not asked whether they wished to be repatriated. One witness explained that anyone who spoke up against the denial of repatriation was tied up in the camp.[1331]

872. In 1956-57, most of the POWs were released from the KPA and became civilians.[1332] Upon decommissioning, POWs were typicallysent to work in mines in remote provinces where they remained until their death.[1333]

- At the Seoul Public Hearing, former POW Mr Yoo Young-bok described how he believed he would be repatriated to South Korea after the armistice in July 1953, but instead in August 1953 he was sent to perform "*incredibly difficult*", "*back-breaking*" forced labour in a mine in the DPRK. He told the Commission:

  > *"I didn't do anything wrong in North Korea. I served 47 years in North Korea. I did everything they asked me to do. I was in forced labour for decades. I did nothing wrong in North Korea... So before I die, it was my wish to return to my hometown where my family lived and I was going to testify about what North Korea did."*[1334]

873. The conditions in the mines were treacherous, and work conditions severe.[1335] Many workers enslaved in the mines died from accidents or diseases contracted in the mines caused by the dust.[1336] Incidents such as explosions tearing off limbs or flesh, collapses in the mines engulfing workers and deaths resulting from crushing or cutting by machinery are not uncommon.[1337] Conditions were so bad, and deaths and severe injuries so common, that according to one witness there was a saying "*Don't ever allow your daughter to marry a coal miner*", meaning a woman married to a coal miner is likely to become widowed and subsequently without a male's income.[1338] The witness estimates that 20 per cent of miners did not reach the retirement age of 60.

- Mr Yoo Young-bok explained:

  > *"Working in the mines, it's very primitive. One of the mines I used to work in, we had to go as deep as 1,000 metres. And the air was bad, and the work itself was back-breaking. I think even the North Koreans say that that is the mine with the most*

[1329] Seoul Public Hearing, 23 August 2013, afternoon (00:08:00).

[1330] TBG021.

[1331] TJH029.

[1332] TBG007, TBG008.

[1333] TBG007, TBG008, TBG015, TBG021, TJH029.

[1334] Seoul Public Hearing, 23 August 2013, afternoon (00:39:00).

[1335] TBG021, TJH029, TJH030 and Seoul Public Hearing witness Mr Yoo Young-bok, 23 August 2013, afternoon.

[1336] TJH029, TBG021.

[1337] TBG021, TJH029.

[1338] TJH029.

> *intense workload. The way we worked there was very primitive – there were no tools."*[1339]

874. POWs who complained about their treatment or advocated for return to the ROK were sent to prisons, political prison camps or just disappeared.[1340] This resulted in a climate of fear within the construction brigades and mines which prevented workers from criticizing or protesting against working conditions, let alone organizing a strike.

- Mr Yoo Young-bok testified:

  "They took us forcefully to mines. Of course some of my comrades or colleagues asked why they are not sending us back to our homes when we are POWs. So there were some who stood up. And they were just telling us that we should do what we were told to do. So there was a lot of peer pressure. And those who stood up against the North Koreans were publicly executed or were secretly transported. I learned later that they were taken to the political prisons. So most of us decided to keep quiet, because we knew, if we complained that we would only be victimized further."[1341]

- Another former POW who managed to escape, also emphasized that they were not allowed to complain and got severely punished if they did. He recalled the case of a fellow POW, Mr Oh Sam Jun, who once said aloud that he wanted to be sent back to ROK. The man was charged with a political crime and sentenced to 15 years in a *kyohwaso*. Eventually he reappeared at the coal mine. Soon thereafter, he disappeared again forever.[1342]

875. POWs forced to work in the coal mines were under particularly strict surveillance by the MPS and SSD.[1343] Interrogations by these agencies (often involving torture) were commonplace for POWs, and every detail of their lives was known and recorded.[1344] Particular effort appears to have been made by the DPRK government to monitor and prevent escape of POWs and Korean War abductees. The Commission also heard testimonies of escape plans that were uncovered or thwarted at the last moment by the SSD as a result of their comprehensive surveillance.

876. A former POW described his brigade's attempt at escape from a POW camp in North Pyongan Province. Several POWs were shot at the time of the incident, and the rest captured and tried. During pre-trial investigations, the witness was tortured with electricity and had his fingernails forcibly removed resulting in memory loss. At trial, 35 POWs were sentenced to death, and as the youngest in the brigade, the witness was sentenced to 20 years.[1345]

877. Thwarted escape attempts have also resulted in the deaths of family members due to the guilt by association policy employed in the DPRK. The Commission heard of the interrogation and subsequent death in a SSD detention facility in North Hamgyong Province of a woman after her brother's plans to assist POWs in escaping was foiled.[1346] Another witness provided testimony about two people who were sent to political prison camp (*kwanliso*) No. 15 at Yodok because they were attempting to assist two elderly POWs

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[1339] Seoul Public Hearing, 23 August 2013, afternoon (00:14:30).

[1340] TJH029, TJH016.

[1341] Seoul Public Hearing, 23 August 2013, afternoon (00:11:00).

[1342] TJH029.

[1343] TBG015, TBG002, TBG007.

[1344] TBG002.

[1345] TBG002.

[1346] TJH024.

cross into China in an effort to return to the ROK.[1347] A former POW told the Commission of his wife's suicide after his escape from the DPRK, presumably in an attempt to save her son from a previous marriage from being tarnished by the guilt by association policy.[1348]

878. Like the Korean War abductees, as POWs and their families were categorized into the lowest rank of *songbun*, their descendants also suffered from the discrimination levied against the POWs. The Commission heard evidence from many POWs and descendants of POWs about the discrimination they faced. For example, children of POWs were denied access to higher education. They were directed to work in the same mines as their family and generally were forced to take the worst jobs in the mines.[1349]

- A POW who returned to the ROK after escaping from the DPRK decades after the war told the Commission how there was little opportunity for his children in the DPRK to flourish because of their *songbun* classification. So much so that his son once asked him *"why [were] we even born?"*[1350]
- The son of a POW working in the same mine as his father discovered, after befriending a security officer, that his documents were marked with the number 43, the number used for children of POWs.

879. The POWs who gave evidence to the Commission all spoke of seeking better opportunities for their children born in the DPRK as the primary reason for their decision to flee. Children and grandchildren are routinely denied access to education or employment opportunities. Daughters are further discriminated against as they find it much harder to marry a man of better *songbun* if discovered to be the child of a POW.[1351] Marriage options for daughters and granddaughters of POWs are thus limited to men of equally low *songbun*. This perpetuates the cycle of discrimination and increases the chances of being widowed at an early age, as men of the lowest level of *songbun* are forced to work in difficult and life threatening environments such as mines. The discrimination faced by descendants has, on occasion, led to the death by suicide of POWs who feel incapable of improving the lives of their children.[1352]

880. POWs who joined the KPA voluntarily after capture were treated somewhat better. However ultimately they too were subjected to the same restrictions on freedoms as the general population.[1353]

- One witness told the Commission that because he agreed to serve for the KPA in a hospital after being taken in 1951, he was never considered a POW and his family faced no discrimination. After the war, he was assigned to work in the Hol Dong Goldmine in Hwanghae Province without his consent, but his position did not require him to work underground.[1354]

881. After the war, families in the ROK of unreturned POWs held in the DPRK did not receive any information about the fate of their POW family members. Nor could they have contact with them. After the Inter-Korean Summit in June 2000, the DPRK and ROK agreed to address the problem of POWs along with separated families in the South-North

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[1347] TJH009.

[1348] TBG002.

[1349] TBG021, TBG008, TJH029, TBG015, TBG002.

[1350] TJH029.

[1351] TJH024.

[1352] TJH029.

[1353] TJH030.

[1354] TJH030.

Ministerial Meeting and the South-North Red Cross Meeting.[1355] In February 2006, at the 7th South-North Red Cross meeting, both sides agreed to include confirmation of life or death of "people whose identities are not known at the wartime and after" with that of separated families. These steps taken on both sides to establish contact between POWs in the North and their families in the South are welcome. However they have not resulted in contact with families for most of the POWs estimated to be alive in the North. They have permitted no more than a few mere hours of contact time for some families.[1356] From 2nd to 19th during the South-North Separated Family Reunions (2000-2013), 19 POWs were confirmed to be alive in the DPRK, 22 dead, and 105 could not be confirmed. Just 17 POWs were able to meet their ROK families in family reunions. In May 2013, an organization in the ROK called "Dream Makers for North Korea" established a centre for registration of POWs. The centre seeks to determine whether unreturned POWs are still alive.[1357]

882. Despite commitment to establish contact between POWs in the DPRK and their families in the ROK, the DPRK maintains that the issue of POWs was settled at the time of exchange of POWs in accordance with the Armistice Agreement. They contend that all POWs remaining in the DPRK are there voluntarily.[1358] The former POWs who provided evidence to the Commission all refuted the assertion by the DPRK that POWs remain in the country voluntarily.

- In Seoul, Mr Yoo Young-bok, elaborated:

  "North Korea continues to maintain that there is not one South Korean POW in North Korea. If you have a home in South Korea, if you have parents and siblings in South Korea, why would anybody want to stay in North Korea, working in these incredibly difficult working conditions of the mine? This is just unreasonable. And still the North Koreans continue to maintain that the POWs in North Korea are there because they wanted to. Now these men have become 70, 80, and according to the North Korean press, there are about 500 of such POWs alive [in the DPRK at present]. The North Korean Government is not letting these 500 people to go to South Korea. And they are actually preventing them from escaping or leaving to South Korea. They catch them and punish them and execute them. And they also repress the children of the POWs – this is completely inhumane. The South Korean government as well as the international community should understand this and try to solve the human rights problem in North Korea."[1359]

- Further, on the issue of permanently reuniting POWs of war in the DPRK with their families in the ROK, Mr Yoo pleaded:

  "[A]ll the POWs (alive) in North Korea would be over 80 years old. … [T]hey have children; they have grandchildren in North Korea. If you just bring one old guy from North Korea to South Korea, how will they live in South Korea because they have their families back in the North? So if South Korean government wanted to resolve this issue, they should be able to bring the families of the POWs in North Korea together to South Korea."[1360]

[1355] KINU, *White Paper on Human Rights in North Korea* (2013).

[1356] See section IV.F for a detailed description of the Separated Family Reunions.

[1357] The Centre's Korean name is Mulmangcho. Mulmangcho website. Available from http://www.mulmangcho.org/?c=2/21&p=2&uid=1310.

[1358] A/HRC/13/13, para. 81 (4 January 2010).

[1359] Seoul Public Hearing, 23 August 2013, afternoon (00:20:00).

[1360] Seoul Public Hearing, 23 August 2013, afternoon (00:51:00).

883. The Commission heard allegations, relating to the fate of missing soldiers serving under the United Nations Command, particularly soldiers from the United States of America. According to the Coalition of Families of Korean and Cold War Prisoners of War and Persons Missing in Action, at the end of the Korean War during the exchanges of prisoners some United States soldiers, who were known to have been alive and in captivity with those who had been released, were not handed over by the DPRK authorities. The Coalition alleges that they numbered more than 900 and that the total figure could be as high as 4,500.[1361] According to the transcript of a strategy meeting between the leaders of the Soviet, DPRK and Chinese forces, in September 1952, 8,000 American soldiers were held by Chinese forces, and approximately 4,000 foreigners were held by the DPRK. In the same meeting, the Commander of the Chinese forces Peng Denhuai acknowledged that "many of the foreign POWs have died in view of the difficult material conditions".[1362] The families of US military men who did not return have sought information from the DPRK, China, Russia and the United States. However, many complain that they have not received sufficient cooperation. This has caused much anguish.[1363]

(c) 1955 -1992: Post-war abduction and enforced disappearance of Republic of Korea citizens

884. Abductions and enforced disappearances of persons from the Republic of Korea have continued long after the signing of the Korean War armistice. Approximately 3,835 ROK citizens have been arrested or abducted by the DPRK since the end of the Korean War,[1364] of which 3,319 people were returned to the ROK within one and a half years, and nine have subsequently escaped and returned the ROK.[1365] Five hundred and sixteen ROK citizens are believed to remain disappeared by the DPRK.

(i) *Abduction and enforced disappearance of fishers*

885. The majority of these abductees (89 per cent) were forcibly disappeared after being captured on fishing boats at sea. In some cases, their boats may have ventured into the DPRK's territorial waters. In others, they appear to have been captured on the High Seas or in ROK territorial waters. In total, 124 ROK boats and 1,147 fishers were captured by the DPRK.[1366] Four hundred and fifty-seven ROK fishers remain disappeared by the DPRK.

886. The exact location of the capture of each boat is not known. However, credible evidence has been received from a former DPRK security official that indicates all boats were captured in a similar manner.[1367] According to former DPRK security officials, the capture of fishing boats and fishers was conducted by naval units of the Workers' Party of Korea.[1368] After their vessels were captured, the crew were investigated for several months. On most occasions several crew members were released after the period of investigation, while others were retained by the DPRK.

[1361] John Zimmerlee, Washington Public Hearing, 31 October 2013, afternoon (00:12:00).

[1362] "Record of a Conversation between Stalin, Kim Il Sung, Pak Heon-yeong, Zhou Enlai, and Peng Dehuai", 04 September 1952, History and Public Policy Program Digital Archive, Translated for NKIDP by Gary Goldberg. Available from http://digitalarchive.wilsoncentre.org/document/114936.

[1363] Washington Public Hearing, 31 October 2013, afternoon. Also, Submission to the Commission: Mark Sauter and John Zimmerlee, *American Trophies: How US POWs Were Surrendered to North Korea, China and Russia by Washington's "Cynical Attitude"* (Lexington, Kentucky, 2013).

[1364] KINU, *White Paper on Human Rights in North Korea* (2013), p. 526.

[1365] ROK, Ministry of Unification.

[1366] Submission to the Commission: ROK Government.

[1367] TLC022.

[1368] TLC040, TLC022.

887. The interception and capture of some boats by the DPRK became known immediately in the ROK because South Korean fishing vessels traditionally travel in pairs and the second boat informed the government of the fate of the first. In other cases, however, both boats disappeared, and it was not until the DPRK released some of the crew members months after capture, that the fate of the boats and crew became known. For example, in the case of Mr Choi Won-mo who was aboard the vessel Poongbook-ho, captured at seas on 5 June 1967, five of the eight crew members were returned to the ROK on 16 September 1967 on another ship.[1369] A comparison between retained and returned crew members shows a trend on the part of the DPRK authorities to retain younger crew members. A former DPRK operative testified that the youngest and smartest were taken for ideology training and turned into spies.[1370] Other detained fishers are believed to have been required to undertake ideological studies before being sent to work in other industries.[1371]

888. In extraordinary cases, the confirmation of the abduction of a boat and its crew was significantly delayed; information only becoming known after the escape from the DPRK and return to the ROK of an abducted crew member. For example, the escape from the DPRK and return to the ROK of a fisher in August 2013, was the first confirmation of the fate of paired fishing boats and 25 crew members that were thought to have been lost at sea 41 years prior.[1372]

- Mr Lee Jae-geun, a fisher aboard a boat captured in 1970 described their capture to the Commission in Seoul:

"On the 29th of April 1970, two gunboats from North Korea came to our boat. Our boat was about 50 miles away from the border. Anyway, these two gunboats approached us. ... I thought the [Republic of] Korean navy was coming to us. But these ten armed people, North Koreans, were shooting at us. And they were yelling at us, 'come down or we'll kill you'. So the captains, all of us, wouldn't know what was happening. We just woke up. Our captain, at that time, was about to rise. They shot a gun at him. They just said one instruction, if we don't follow, they will shoot us right away. That was very scary so we were not able to ask why they were doing what they were doing. They asked us to step down so we did. And if we didn't do what they asked us to do, they said that they would kill us right away. So, we did what we were told to do, we went into the dining room. Then they closed the door. Anyway, these two gunboats from North Korea pulled our boat for about an hour. Right about when we were about to cross the border, I think the [Republic of] Korean navy discovered us and started attacking us. However, our boat has already crossed the 38th line, so we were already in the territory of North Korea. So we were not saved by the Korean navy."[1373]

889. According to a former official, the youngest and most physically fit among the captured crews were not returned to the ROK.[1374] They were sent to spy training facilities run by the Workers' Party of Korea.

- Mr Lee Jae-geun was one of the captured ROK fishers who was trained to become spy. He testified before the Commission:

"[i]n general, everyone who was abducted from South Korea was relatively highly educated. We graduated from elementary school, middle school, and some of them

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[1369] Mr Choi Sung-yong, Seoul Public Hearing, 23 August 2013, morning.

[1370] TLC022.

[1371] TAP014, TLC014, TBG016.

[1372] The Odeyang 61 and Odeyang 62 disappeared at sea in December 1972.

[1373] Seoul Public Hearing, 23 August 2013, morning (01:31:00).

[1374] TLC022.

> *were high school dropouts but we were relatively highly educated. And the North Koreans, they monitored us, they observed us, they looked at our physical fitness and tried to see if we could function afterwards, and see if we could serve to protect Kim Il-Sung and the leaders."*[1375]

890. At the spy school, the students were given lectures on *Juche*, Kim Il-sung and revolutionary behaviour. They were trained how to do taekwondo, drive, carry out abductions, break into homes, steal, sneak into houses undetected and kill. Class sizes are small, generally limited to four people per room. Trainees are prevented from seeing all other trainees aside from the three in their class, at all times; they are ushered into and out of rooms at different times and in extreme cases forced to wear eye-coverings while walking between rooms and facilities.

> *"We were sent to the spy school. We didn't know why we needed this school. They said to us, if you graduate from this school, you will receive far more privileges or benefits than graduating from other schools. And they were threatening us even, so we had no choice but to go to this spy school. So, we received education at that school for 3 years and 8 months."*[1376]

891. The Commission also heard about the methods used to ensure that the captives were wholeheartedly engaging in the learning process at the spy training schools. Combinations of fear and physical force were used to coerce the students.

- Mr Lee described being taken to the mountainside and threatened with death unless he committed to taking the classes more seriously and performing better in them.

> *"When I was in this school, I did not really study. I was not very attentive for a few days, then one day, they took me and they said they would just take me for a walk. They took me in a car, I think we drove for about two hours, deep into a mountain. There was nobody in the mountain where they stopped the car. The driver showed me two guns that he had with him, and he said 'will you continue to be defiant? You have to kneel or you will have to eat the bullets'. So I asked, 'do you have to kill me?' And he said 'if you don't listen to us, why should I let you live?' So I said, 'okay, I will kneel, I will be subservient'. So that is why I was able to survive, I was able to live."*[1377]

892. Those who were compliant and amenable to undertaking the spying activities expected of them were kept by the state in separate housing and presumably utilized at the will of the state. Those who did not graduate with distinction from the spy training schools were sent to work in factories. Students at the schools were made to swear they would not share the truth of their abduction before being released from the school.

> *"We had to sign documents with our fingerprints pledging that we would not talk about our abduction to North Korea. ... If we told anybody in society that we had been abducted, we would have been taken to political prison camps. We graduated and we joined the North Korean society and we did whatever we were told to do."*[1378]

893. Abducted fishers not selected for spy training were sent to other ideological training schools before being allocated to work in another industry and released into DPRK

[1375] Seoul Public Hearing, 23 August 2013, morning (01:44:00).

[1376] Seoul Public Hearing, 23 August 2013, morning (01:35:00).

[1377] Seoul Public Hearing, 23 August 2013, morning (01:39:00).

[1378] Seoul Public Hearing, 23 August 2013, morning (01:33:00).

society.[1379] One witness told the Commission that the DPRK portrayed these persons as "*courageous heroes who voluntarily came to the DPRK*".[1380]

894. Once released from the schools, abductees were placed under strict surveillance by the SSD. One witness told the Commission he was placed under seven levels of surveillance.[1381] Being of South Korean origin, fishers and their descendants were classified into the hostile *songbun* class, restricting their education and employment opportunities.

- *"The son, the child of a South Korean, is prevented from getting higher education. The descendants of those who are loyal to the government, who did service for the North Korean government, are only permitted to go to university. … I told him that I would do, even give my life for him to get higher education. In South Korea, my son graduated from Korea University. He studied electric engineering and he is doing very well. But in North Korea, just because I came from South Korea, my kids, my son did not have access to higher education, good education. Anybody who has experienced life in North Korea is aware of this, of such fact."*[1382]

(ii) *Abductions by agents of the Democratic People's Republic of Korea*

895. Of the 516 ROK citizens who remain detained in the DPRK, 70 were abducted by covert DPRK agents deployed in the ROK and other countries. These include passengers of a hijacked commercial airline flight, vacationing teenagers and other citizens taken from the ROK, ROK citizens captured abroad and soldiers and coast guards.[1383] All but one of these enforcedly disappeared persons have not been permitted any contact with their families or the authorities of the ROK, despite their families' repeated pleas and petitions transmitted to the DPRK. A former DPRK intelligence officer who testified before the Commission advised that Office 35 of the Central Committee of the Workers' Party of Korea, an intelligence bureau under the effective command of Kim Jong-il, was implicated in abductions from the ROK.[1384]

896. Another former official stated that orders to abduct ROK nationals were conveyed through the Director-General of the KPA Reconnaissance Bureau (a Three Star General). The selection of targets was apparently made on the basis of advice from a research centre known as "Military Office 584".[1385] The Commission received evidence that one of the tasks of special operations unit within the KPA was to conduct spying activities along the coast of the ROK and Japan. The confidential source stated that Military Office 584 conducted three types of operations, general infiltration, abductions and study of coastal waters. Abducted fishers who passed through the ideological training and spy school were used to interpret data about these activities, and to guide agents taking to the seas to undertake operations.[1386]

897. On 11 December 1969, a Korean Airlines aircraft on a domestic flight was hijacked by a DPRK agent and flown to the DPRK. On 13 December 1969, the Pyongyang Broadcasting Station reported that the airplane was flown into the DPRK voluntarily by the two pilots. However, it was later discovered that the pilots were threatened by a DPRK

[1379] TAP014, TLC014, TBG016.

[1380] TBG016.

[1381] Mr Lee Jae-geun, Seoul Public Hearing, 23 August 2013, morning (01:50:00).

[1382] Mr Lee Jae-geun, Seoul Public Hearing, 23 August 2013, morning (01:55:00).

[1383] ROK Ministry of Unification, *Tongil Baekseo* (Unification White Paper) (2012), p. 142.

[1384] TLC040.

[1385] TLC022.

[1386] TLC022.

agent on-board.[1387] Four crew members and 46 passengers were aboard the plane. Thirty-nine of the passengers were released 66 days after the hijacking and returned to the ROK. The four crew members and the remaining seven passengers were not returned to the ROK. The DPRK claimed that the 11 remained in the DPRK of their own will. Two of the flight attendants have been used in broadcasts to the ROK.[1388] In August 1992, Ms Sung Kyung-hee spoke on the Pyongyang Broadcasting Station saying "*the DPRK is where my heart, body and everything is rooted*".[1389] In a press conference with the 39 passengers who were returned to the ROK, it became evident that those remaining in the DPRK did not do so voluntarily.[1390] The DPRK also rebuffed petitions for their release transmitted through the Red Cross. The 11 retained against their will were relatively young and highly skilled individuals. They worked in professions such as pilot, film production, a camera operation, publishing and medicine.

- At the Public Hearing in Seoul, the son of abducted film producer Mr Hwang Won, and the brother of the abducted flight attendant Ms Jung Kyung-sook spoke to the Commission. Both expressed their deep sense of loss and desperation at the abduction of their family members. Mr Jung told the Commission, *"for our family, that incident was just truly sad. I mean, we were so happy because she graduated from a good school, she got a great job, and then she was abducted."*[1391]
- Mr Hwang In-chul told the Commission that he stopped believing in the ROK government after several years of seeking their assistance to locate his father in the DPRK and being constantly rejected.

898. Relatives of the abductees from the hijacked aircraft have faced great difficulty in obtaining information about their family members. According to relatives of the abductees, the ROK government has not been willing to raise the issue with the DPRK. They have been advised that abductees are considered to be separated families and thus are dealt with within the sequence of the larger number of separated families.[1392] Mr Hwang surmised that, as everyone in the ROK is focussed on reunification, they think of the abductions in political rather than humanitarian terms.[1393]

899. The abduction of a civil airliner and its passengers is a serious violation of international law. On 9 September 1970, the United Nations Security Council in Resolution 286 appealed to the State parties concerned with the hijacking of aircraft to immediately release all passengers and crew.[1394] On 25 November 1970, the United Nations General Assembly adopted Resolution 2645 at its 25th session, condemning aerial hijacking and detention of its crew and passengers and urged states in which the aircraft resided to provide for the care and safety of the passengers and crew and enable them to resume their journey.[1395] Since 1983, the DPRK is also a State Party to the Convention for the Suppression of Unlawful Seizure of Aircraft, which requires it to facilitate the onwards

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[1387] "1969 KA *gi naphooksageon*" (1969 Abduction of Korean Airlines Flight), *Donga Ilbo*, 26 February 2001. Available from http://www2.donga.com/news/print.php?n=200102260483.

[1388] KINU, *White Paper on Human Rights in North Korea* (2013), p. 531.

[1389] "Je 3 cha isangajok gyohwanbangmoon pyongyang sangbong sosik jonghap"(News Update of the Third Family Reunion in Pyongyang), *Radio Free Asia*, 25 February 2001. Available from http://www.rfa.org/korean/news/51210-20010225.html.

[1390] "*Eokryugaek songhwan 4 dangye daechaek*" (4-step strategies to return the detained passengers), *Kyunghyang Sinmun*, 21 February 1970.

[1391] Mr Jung Hyun-soo, Seoul Public Hearing, 23 August 2013, morning (03:55:00).

[1392] Mr Hwang In-chul, Seoul Public Hearing, 23 August 2013, morning (03:43:00).

[1393] Ibid.

[1394] S/RES/286 (1970).

[1395] A/RES/2645 (1970).

travel of any passengers aboard a unlawfully seized plane that lands in the DPRK.[1396] Despite these calls from the international community, no adequate response to this international crime has ever been received.

900. Five ROK high school students were abducted from seaside locations in the ROK during the summer of 1977 and 1978. In 1977, two high school students, Mr Lee Min-gyo and Mr Choi Seung-min were abducted from the same beach.[1397] In the summer of 1978, Mr Kim Young-nam was taken from a beach in Gunsan, ROK, and Mr Lee Myung-woo and Mr Hong Gun-pyo were abducted from a beach in Hongdo. Mr Kim Young-nam was able to reunite briefly with his family at a separated family reunion in 2006.

901. A former DPRK intelligence officer testified before the Commission that the abduction of high school students was carried out by Office 35, under the command of Kim Jong-il. According to the officer, the students were taken to the North and schooled for the purpose of being sent to the United States and ROK as foreign students.[1398]

902. ROK authorities list 30 ROK soldiers and coast guards to have been abducted. The soldiers were abducted from either the Demilitarized Zone (DMZ) or during missions in the Vietnam War, while the coast guards were taken during North Korean attacks on the ROK sea guard.

903. The Commission heard allegations that some ROK soldiers who served in the Vietnam War and were taken prisoner of war were denied repatriation and handed over to the DPRK. Mr Ahn Young-soo alleged that his brother, Mr Ahn Hak-soo, who disappeared while serving in Vietnam and surfaced in 1967 in Pyongyang as a newsreader, was handed over to the DPRK and executed in 1975.[1399] In 2009, an investigative panel set up by the Government of the Republic of Korea, which had originally assumed Mr Ahn Hak-soo had voluntarily defected to the DPRK, found that he had been captured in Vietnam and was sent to the DPRK against his will.[1400]

- Mr Ahn Young-soo told the Commission about hearing his brother on the radio:

> *"My brother's voice could be heard. His throat was really harsh. It was as if he was reading a script; he was talking about his reasons and how he came to be in North Korea. And it was not just my older brother; everyone knows that those who had been taken to North Korea forcefully at that time would have to read some script like the one that my brother had read."*[1401]

904. Twelve ROK nationals are believed to have been abducted during overseas travel. Two abductees in this category were the well-known ROK actress Ms Choi Un-hee and ROK director Mr Shin Sang-ok who have since escaped. Others include two families of eight people from West Germany, one student from Austria, and one teacher from Norway.

905. In 1978, South Korean Actress Ms Choi Un-hee was abducted from Hong Kong after travelling there to meet people in the movie industry. After being forced onto a boat by DPRK agents, Ms Choi demanded an explanation from the abductors, to which they

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[1396] See Convention for the Suppression of Unlawful Seizure of Aircraft, article 9. The same obligation emerges from article 11 of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, which the DPRK also ratified in 1983.

[1397] KBA, *White Paper on Human Rights in North Korea* (2006), p. 294.

[1398] TLC040.

[1399] Seoul Public Hearing, 23 August 2013, afternoon (01:04:00).

[1400] See also "Vietnam War Soldier is POW, Not Defector to Pyongyang", *The Korea Times*, 30 September 2009. Available from http://www.koreatimes.co.kr/www/news/nation/2009/09/113_52798.html.

[1401] Seoul Public Hearing, 23 August 2013, afternoon (01:25:00).

replied "Madam Choi, we are now going to the bosom of General Kim Il-sung".[1402] On her arrival in the DPRK on 22 January, she was met by Kim Jong-il who took her on a tour of Pyongyang.[1403] Upon learning of her disappearance, Ms Choi's ex-husband Shin Sang-ok, a leading filmmaker, went to Hong Kong to look for her. He was also abducted from Hong Kong by the same DPRK agent in July 1978.[1404] Kim Jong-il said to Mr Shin upon his arrival in the DPRK "*I had ordered the operations group to carry out a project to bring you here as I wanted a talented director like you to be in the North.*"[1405] This information is consistent with the accounts from former DPRK officials who were personally involved in abductions who indicated that Kim Jong-il personally signed off on abduction orders.[1406] During their time in the DPRK, Mr Shin Sang-ok and Ms Choi Un-hee were involved in a number of DPRK-produced movies of which Kim Jong-il was the executive producer. The couple escaped into the United States Embassy while visiting a film festival in Vienna in 1986. They later settled in the United States; Mr Shin has since passed away.

906. A number of ROK citizens have also gone missing in Europe and are believed to have been abducted by DPRK agents working there. In April 1971, an officer of the Korean Embassy in the Federal Republic of Germany (West Germany) Mr Yu Seong-geun, his wife Ms Jeong Sun-seob, and two children, Yu Kyeong-hee and Yu Jin-hyee, were abducted.[1407] In June 1979, Ko Sang-moon disappeared from Europe, and later the DPRK claimed he had defected to the DPRK of his own volition after he had entered the DPRK Embassy in Oslo.[1408] In December 1985, Mr Oh Gil-nam, his wife Ms Shin Suk-ja and two children, Ms Oh Hye-won and Ms Oh Gyu-won, were lured to the DPRK by a DPRK agent in Germany.[1409] Mr Oh succeeded in escaping in Copenhagen whilst on a mission to lure other ROK nationals to the DPRK. His family remains detained in the DPRK. In August 1987, Massachusetts Institute of Technology student Mr Lee Chae-hwan disappeared in Austria during his summer vacation there.[1410]

(d) Efforts to resolve the abductions and enforced disappearances on the Korean peninsula

907. Family members of ROK POWs and abductees have, over the years, suffered discrimination from their own government in addition to the mental anguish and loss from the sudden disappearance of their loved ones. During the years of authoritarian rule in the ROK (1963-1988), relatives of persons abducted and forcibly disappeared by the DPRK were subjected to surveillance and prevented from entry into government education facilities and employment as they were considered to be connected to leftist deserters and therefore untrustworthy.

[1402] Choi Eun-hee and Shin Sang-ok, *Jogukeun Jeohaneul Jeommeolli* (Kidnapped to the Kingdom of Kim Jong- Il), vol. 1, p. 24, as cited in The Committee for Human Rights in North Korea, *Taken!: North Korea's Abduction of Citizens of Other Countries* (2011), pp. 14 and 50.

[1403] Ibid.

[1404] TBG031.

[1405] Choi Eun-hee and Shin Sang-ok, *Jogukeun Jeohaneul Jeommeolli* (Kidnapped to the Kingdom of Kim Jong- Il), vol. 1.

[1406] TLC022, TBG025, TLC040.

[1407] KBA, *White Paper on Human Rights in North Korea* (2006), p. 296.

[1408] The Committee for Human Rights in North Korea, *Taken!: North Korea's Abduction of Citizens of Other Countries* (2011), p. 33.

[1409] A/67/370 [31-38].

[1410] The Committee for Human Rights in North Korea, *Taken!: North Korea's Abduction of Citizens of Other Countries* (2011), p. 43.

- Mr Choi Sung-yong at the Seoul Public Hearing explained that the ROK government's fears were exacerbated after the attack on the Korean Blue House (the residence of the ROK President) in 1968:

  "In 1968 there was an attack on the Korean Blue House by Kim Sin-jo. Well before that when the fishers and others that had been abducted to North Korea, if they returned to South Korea they were welcomed and rewarded, but after that incident by Kim Sin-jo in 1968, anybody who's been to North Korea was arrested because of the violation of our law against communism so there was this law that was being guilty by association. We couldn't go abroad. We couldn't become a public servant so the family members of the North Korea abductees were victimized one more time by the South Korean government."[1411]

908. The ROK policy of monitoring the relatives of persons forcibly disappeared for national security reasons continued until the late 1990s. Children of the disappeared suffered greatly from this policy as they were denied access to higher education and employment opportunities with the government. Many people expressed their frustration and despair to the Commission at being denied basic rights in their own country. For example, one witness the daughter of an abducted fisher lost her job, as her employer was not comfortable with the unwanted attention received from the police as they routinely visited her workplace to monitor the abductee's daughter.[1412] Many families chose to relocate in ROK to avoid the unnecessary attention of the authorities. However, in some instances, this only roused more suspicion and consequently more visits form the police.[1413]

- Family members of ROK abductees and disappeared persons told the Commission:

  "The police was watching the families of the abductees, they were watching who was coming or who was going, and if we moved, that is, if we relocated, they would come visit us and ask us questions."[1414]

  "The police have done nothing to help us. The only thing they have done is put a surveillance on us. It seems that the South Korean government has never appealed or has complained to North Korea about the abductees."[1415]

909. At the height of the tension between the North and South, some family members of persons suspected to have gone to the DPRK voluntarily, were are treated particularly harshly, as intelligence agency staff were overzealous in the their attempts to discover spies.

- The family of a ROK soldier transferred to the DPRK by the communist forces during his service in Vietnam was treated particularly harshly. Mr Ahn Yong-soo, the brother of the soldier told the Commission:

  "Well, soon after my brother had been abducted, we have gone through many difficulties. As I said my father was the principal of a school but he had to retire, and, since he was forcefully retired from the school, we were defined as a potential spy family. And my father was sent to... a factory in a mountainous region in Kangwon and our family's human rights were violated. I have been beaten and I have been tortured as well.

[1411] Seoul Public Hearing, 23 August 2013, morning (00:13:00).

[1412] TSH024.

[1413] Mr Jung Hyun-soo, Seoul Public Hearing, 23 August 2013, morning (03:55:00); TSH024, TSH026 and TSH027.

[1414] Mr Jung Hyun-soo, Seoul Public Hearing, 23 August 2013, morning (03:55:00).

[1415] Mr Choi Sung-yong, Seoul Public Hearing, 23 August 2013, morning (00:53:00).

> *There was a really bad practice by the National Intelligence Agency at that time. There were rewards that were given to the agents if they were able to make somebody into spies, if they were able to discover spies. So they used to make up, fabricate these spies, and if they reported these spies, the agents were able to get rewards.* "[1416]

910. During the "Sunshine Policy" years (1998 – 2008) initiated in ROK by President Kim Dae-jung, because the focus of dialogue with the DPRK was on establishing business ventures and peaceful coexistence with the North, issues relating to the enforced disappearance of ROK nationals were avoided. Under President Kim Dae-jung, abductions were categorized within the grouping of "separated families", absorption of the issue of abductions into the larger category of separated families meant there was no foreseeable short-term resolution which caused additional anguish for family members.

911. While the absorption of the abduction and enforced disappearance issue into the issue of separated families did enable relatives to apply to attend separated family reunions, in reality it benefited the relatives of very few of the forcedly disappeared. From 2000 to 2010, 18 Separated Family Reunions were held.[1417] From 2005, families of abducted citizens began to apply to participate in these reunions. In order to apply to attend a Separated Family Reunion, families were obliged to participate in a lottery in ROK. If selected they had to then apply to the Red Cross for a life verification status. If they received confirmation that the family member was alive, they could meet their family member at the next Separated Family Reunion. Family members of the forcibly disappeared could apply to attend separated family reunions, on the condition that no reference be made to how the families became separated or the issue of the abduction more generally. A mother of two disappeared fishers told the Commission of the joy she experienced at being able to reunite, albeit briefly, with one of her abducted sons at a separated family reunion, but lamented that she was so terrified about what she could say, they did not talk very much.[1418] For most relatives of abductees who applied to attend a separated family reunion, the response they received from the life verification request was either that their loved one was dead or that a life verification status was not possible.

912. Policy changes in recent years in the ROK have enabled family victims of the disappeared to collectivize, share their experiences and advocate for their rights. Since about 2003, family members have lobbied the ROK government seeking to have it commit to obtaining the life verification status of disappeared persons and to provide compensation to the families for the additional harm suffered through government monitoring and discrimination. In 2007, a law was enacted to provide restitution for families of abductions who applied within a 3 year period.[1419] The monetary payment was at first framed as compensation for hardship faced from government activities, but was later renamed to *Ui-ro-geum*, (lit. "reward for suffering"- restitution). Awards of USD 30,000 – 45,000, depending on when a victim was abducted, were awarded to families, to divide between themselves. In 2007, the number of abductions accepted by the government was about 400. By the programme's close in 2010, the number had been extending to 517 official cases of abductions. Families of 516 abduction victims applied for the restitution, and an estimated 1200 individuals received payment.

[1416] Seoul Public Hearing, 23 August 2013, afternoon (01:27:00).

[1417] KINU, *White Paper on Human Rights in North Korea* (2013), p. 513.

[1418] TSH021.

[1419] ROK, *Law on Compensation and Support of the Abductees after the Military Armistice Agreement* (27 April 2007).

913. In 2010, the Korean War Abduction Truth Ascertainment and Regaining Honour of Abductees Law was enacted in the ROK. The law was an important rehabilitation measure for family victims of wartime abduction, establishing the "Commission on Korean War Abduction Damage Truth Ascertainment" charged with truth-seeking in relation to the abductions to restore the dignity of the abducted and their families. The legislation also bound the state to establish and enforce policies such as confirming the death of abductees and returning them (including their remains if deceased), facilitating the exchange of letters and family reunions.[1420]

914. The change in government attitudes and policies toward the forcibly disappeared and their family members has also resulted in the belated recognition of many service related achievements for persons who have been disappeared by the North. For example, in June 2013, Mr Choi Sung-yong received a medal of honour on behalf of his father who served as the head of a security unit during the Korean War, and was later abducted from a vessel at sea in 1967.[1421]

915. The abduction issue is complicated by political realities in both the DPRK and ROK. Both states claim that the population of the whole peninsula belongs to their state. Nonetheless, the systematic abduction of civilians during the war, and post war, together with the denial of repatriation to POWs, regardless of a view of citizenship, constitutes enforced disappearance.

(e) 1959 - 1984: enforced disappearance of ethnic Koreans and Japanese nationals who migrated to the Democratic People's Republic of Korea from Japan during the "Paradise on Earth Movement"

916. In the aftermath of World War II, some 2.4 million ethnic Koreans were residing in Japan. In 1945 the DPRK established the General Association of Korean Residents in Japan (*Chae Ilbon Chosonin Ch'ongyonhaphoe* in Korean, or *Zai-Nihon Chosenjin Sorengokai* in Japanese, abbreviated to *Chongryon* and *Chosen Soren* respectively). *Chongryon* established schools, businesses and a university in Japan offering alternative education and employment prospects for Korean residents in Japan. Many ethnic Koreans living in Japan at the time showed allegiance to *Chongryon*. Faced with having to choose a between the DPRK or ROK, Koreans living in Japan elected to be registered as DPRK nationals residing in Japan. These people became the target of the "Paradise on Earth" or "Return to Paradise" propaganda campaign.

917. The Paradise on Earth movement began on 14 December 1959. It officially ended in 1984. However by 1961, 81 per cent of the 93,340 "returnees" had already crossed to the DPRK.[1422] At the time the movement was seen as a humanitarian service and organized between the Japanese Red Cross and the Red Cross of the DPRK. The majority of the 93,340 "returnees" were Korean residents living in Japan. Many of these people were not originally from north of the 38th parallel. Rather, their families were from the South and were living in Japan at the time of the division of the Korean peninsula. Amongst the "returnees", 6,730 were Japanese nationals who were the spouses or children of Korean residents in Japan.[1423] 1,831 were "Japanese wives", Japanese women married to Korean men. An indeterminate number of the Japanese nationals were men and children.

[1420] ROK, *Law on Korean War Abduction Truth Ascertainment and Regaining Honour of Abductees*, Law no. 11690, (26 March 2010), article 3.

[1421] Mr Choi Sung-yong, Seoul Public Hearing, 23 August 2013, morning (00:07:15).

[1422] Mr Yamada Fumiaki, Tokyo Public Hearing, 30 August 2013, morning.

[1423] Kikuchi Yoshiaki, *Kitachousen kikoku jigyou 'soudaina rachi' ka 'tsuihou' ka* (The North Korean Return Home Movement: A Grand Abduction or Exile?*)* (Chuokoron-shinsha, Tokyo, 2009).

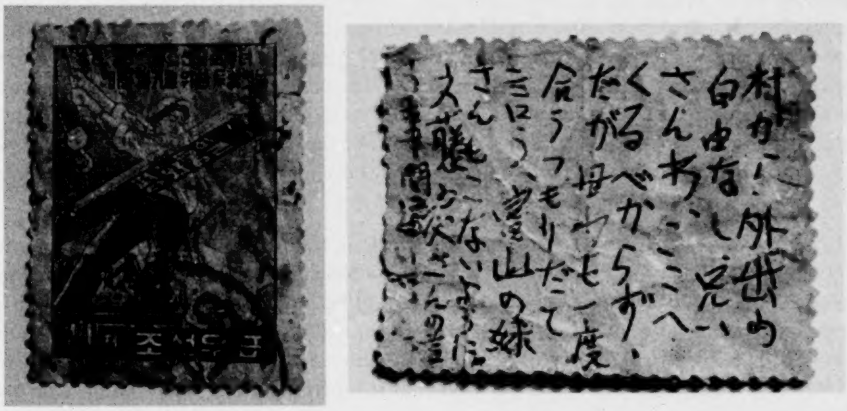
918. At the time, the DPRK, referred to as Paradise on Earth, was portrayed by *Chongryon* as a place where people would work according to their ability and receive goods and services (such as education and medical care) according to their needs. The DPRK was said to have more mineral resources and food than Japan, and was anticipated to overtake Japan in terms of productivity in many sectors; it was commonly called "the workers' paradise". At the time, Japan, still recovering from its defeat in World War II, had insufficient food supplies, and many were living in poverty. Korean residents in Japan often lived in more dire circumstances than the Japanese due to discrimination. Mr Kato Hiroshi, an expert on the return movement and humanitarian activist, explained to the Commission at the Public Hearing in Tokyo, that it was not just *Chongryon*, but the Japanese media sources also that "*built up these dreams*" enticing almost 100,000 people to move to the DPRK.

- As Mr Kato explained, unfortunately for those that went to the DPRK, they discovered the situation was very different:

> *"[However,] if you look at reality, North Korea was trying to recover from the devastation of the Korean War. They were lacking human labour, skills, manufacturing facilities as well as materials, but that's when the country came up with this campaign and called their country a 'Paradise on Earth'. But [as I said,] because of the conditions, the place that the ethnic Koreans called their fatherland was a place where a very harsh reality was waiting for them. However, nobody knew that back then. Now, many people understand what the reality was."*[1424]

919. The harsh truth that was awaiting the returnees was not just the basic living conditions or allowances; they would lose control over their lives. From the day they arrived, decisions of where to live, where to work, what to eat, who to speak to and how, were dictated to them. Their movement was restricted, they were monitored, and encouraged to monitor others. Mail they sent to family in Japan was checked and censored.

Exhibits T8a and T8b



村から外出ぬ
自由なし兄、
さん者、ここへ
くるべからず、
たがる母にも一度
会うつもりだて
ミロう、富山の妹
さん文藤こないように
[illegible]

920. Despite the censorship, coded and obscure messages sent to family in Japan were able to convey the challenges and difficulties faced in the DPRK. In one example shown to the Commission, by prior arrangement, a 'returnee' had written their true sentiments on the back of a stamp that could otherwise not be expressed in the letter for fear of censorship.

[1424] Tokyo Public Hearing, 30 August 2013, afternoon.

The author had written *"We cannot leave the village. Older brother do not come. Mother says she wishes to see you. Tell our sister in Toyama also not to come. What Bunto's father said is correct."*[1425]

- One witness, the only member of his family to remain in Japan, received similar messages from his family after they migrated to the DPRK. A strong supporter of the DPRK, the witness had wanted to migrate to the DPRK with his family. However, due to his work with *Chongryon,* he was asked to remain in Japan and continue his work there. Upon expressing an interest to his family in the DPRK to send his daughter from Japan to live there in their care, his family began to write cryptic messages to him such as "*It is better for children to stay with their parents*", and "*Grandmother ate one piece of (something) and was very happy*". The witness understood from these messages that his family did not think it was a good idea for him to send his daughter there. Later able to visit the DPRK himself and see his family there, he saw how malnourished they were and timid to speak, fearful of their monitors.[1426]

921. Families in Japan became concerned about the prospect of life in the DPRK because of persistent requests for family in Japan to send goods and money; this stemmed the flow of Koreans living in Japan into the DPRK. Reacting to this reality, the DPRK government severely restricted contact between the "returnees" and their families in Japan. Promises made to the "Japanese wives" before departing for the DPRK that they could return to Japan to visit their families after 3 years in the DPRK were not kept, and the returnees increasingly felt monitored and persecuted. Although they had travelled to the DPRK voluntarily, by the mid-1960s the majority were effectively being retained there against their will and were no longer allowed to have any contact with family members they had left behind.

922. Returnees and general DPRK citizens were both distrusting of the other. Many "returnees" felt deceived when on their arrival at Chongjin Port where they could see the infrastructure and standard of living was extremely poor compared to Japan. DPRK nationals were suspicious of the "returnees" as they had been living in a capitalist society.[1427] The suspicion of the returnees resulted in most being placed under strict surveillance, given "hostile" *songbun* status, and being confined to remote districts. Speaking in Japanese was at first discouraged and later banned. Witnesses gave evidence to the Commission of the punishments allocated for speaking Japanese or singing Japanese songs including being taken to a police station and beaten. The Commission received evidence from one witness who was tied to a chair, beaten and stabbed in the stomach after being caught singing in Japanese.[1428]

923. Many of the "returnees" had high levels of education, due in part to opportunities afforded to them in Japan that were not available in Korea during the years of conflict and subsequent reconstruction. At first, these people were able to work in high level positions in organs of importance and were permitted to live in or near Pyongyang. At the Tokyo Public Hearing, Mr Kato provided several examples of persons who at first were welcomed for their talent and skills, but were later persecuted as suspected spies.[1429] The Commission also

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[1425] Exhibit 8A-T and 8B-T, provided by Mr Yamada Fumiaki at the Tokyo Public Hearing, 30 August 2013, morning (00:29:30).

[1426] TSH012.

[1427] Mr Yamada Fumiaki, Tokyo Public Hearing, 30 August 2013, morning (00:32:00); TSH008, TSH009, TSH005, TSH010, TSH011.

[1428] TSH003.

[1429] Mr Kato Hiroshi, Tokyo Public Hearing, 30 August 2013, afternoon.

heard in person from family members of "returnees" who were among the highly skilled and valuable but ultimately fell from favour and were banished to a political prison camp.

- Mr Shibata Hiroyuki, brother of Mr Shibata Kozo, told the Commission how his brother became a political prisoner, because he petitioned the DPRK Government to allow Japanese nationals to go home:

  "It was a clear sentence of a period of 20 years, and it was very arduous. He was imprisoned in that first sentence because he was aiding too much the Japanese spouses. That's why Kozo, my brother, was arrested. That was the charge. During his 20-year sentence, he didn't have so much responsibility or tasks during imprisonment, but then later on after the 20 years' term, he got an additional 6 years. During these 6 years, he felt that – well, he served already, so he will be released. That's what he expected. Even the judge didn't say anything. However, suddenly at the end of the 20-year term, the judge said that you have suspicion to be undertaking spy espionage and as a result he got additional years."[1430]

  Based on witness testimony from a fellow prisoner of Mr Shibata Kozo, Amnesty International later reported that Mr Shibata Kozo had been kept at Sungho political prison camp (*kwanliso*). Following inquiries by Amnesty International, the DPRK claimed that Mr Shibata Kozo and his entire family died in a train accident under improbable circumstances.[1431]

- Mr Kang Chol-hwan's paternal grandparents, moved from Japan to the DPRK in the 1960s to help build the country. In 1977, his grandfather suddenly disappeared. Soon after, Mr Kang (then 9 years old) was arrested and taken, without indictment or trial, to Political Prison Camp No. 15. Only his mother was spared, because she accepted a forced divorce from Mr Kang's father. After having survived ten years of starvation and forced labour in the camp, he was released without any explanation. Mr Kang described to the Commission that an entire section at Political Prison Camp No. 15 was occupied by ethnic Koreans from Japan who had been detained, apparently because they knew too much about capitalist culture.[1432]

(f) 1970s – 1980s: abduction of Japanese nationals

924. In September 2002, the Japanese Prime Minister Koizumi Junichiro visited Pyongyang to negotiate with DPRK authorities the return of Japanese nationals suspected of having been abducted to the DPRK. The DPRK's Supreme Leader Kim Jong-il admitted to Prime Minister Koizumi that DPRK agents had abducted 13 Japanese nationals (seven women and six men). The admission came after years of speculation in Japan that many Japanese nationals had been forcefully kidnapped by the DPRK. In his admission, as reported by Prime Minister Koizumi, Kim Jong-il acknowledged that "*these were the work of persons affiliated with North Korea in the past. He offered his apologies, expressing his regret.*"[1433] The Joint Pyongyang Declaration issued by Kim Jong-il and Prime Minister Koizumi on behalf of their states indicates that *"With respect to the outstanding issues of concern related to the lives and security of Japanese nationals, the DPRK side confirmed*

[1430] Mr Shibata Hiroyuki, Tokyo Public Hearing, 30 August 2013, afternoon (00:51:45).

[1431] Amnesty International, "North Korea: Concern about the fate of Shibata Kozo and his family", September 1994 (ASA 24/007/1994). Available from https://www.amnesty.org/en/library/asset/ASA24/007/1994/fr/34cd971d-ebf0-11dd-9b3b-8bf635492364/asa240071994en.pdf.

[1432] Seoul Public Hearing, 24 August 2013, afternoon.

[1433] Japan, Ministry of Foreign Affairs, "Opening Statement by Prime Minister Koizumi Junichiro at the Press Conference on the Outcome of his Visit to North Korea", Press statement, 17 September 2002. Available from http://www.mofa.go.jp/region/asia-paci/n_korea/pmv0209/press.html.

that it would take appropriate measures so that these regrettable incidents, that took place under the abnormal bilateral relationship, would never happen in the future."[1434] Prior to this admission to Prime Minister Koizumi, the DPRK had denied all allegations of connections with disappeared persons believed to have been abducted or forcibly disappeared by the regime.

925. The Commission received testimony from former DPRK officials who worked in the office charged with conducting abductions. A former official who worked in Office 35 of the Workers' Party of Korea, stated it is charged with "*normal intelligence activities, such as kidnappings and abductions*". One unit in the office dealt specifically with the abductions of nationals from Japan. The former official joined the office in 1990, and at that time the order to "bring" people to the DPRK came from Kim Jong-il. The director then wrote the plan to implement the order, and Kim Jong-il signed it. The general instruction was to persuade foreigners to go to the DPRK. However, if that was not possible, then they should be kidnapped.[1435]

926. Kidnappings of nationals on land in Japan mostly occurred in the countryside, near the coast. Agents approach Japan by sea, and landed onshore. Women walking alone were often targeted for the ease at which they could be overcome. The former official cited various methods used to overcome victims. These included, surrounding the victims, choking them and/ or tying a bandage soaking in anaesthetic over their mouths before putting them in a sack for transportation to the boat. Other witness testimony received by the Commission points to abduction tactics being a regular component of spy training,[1436] and that 50 per cent of spies are taught Japanese, and 50 per cent the South Korean dialect.[1437] The former official working with Office 35 personally knew of 10 Japanese women who had been abducted.[1438]

927. A second former official working with the Bureau of Reconnaissance of the KPA was involved in the abduction of Japanese nationals from sea. According to the former official, abduction operations required the signature of Kim Il-sung or Kim Jong-il. Kim Jong-il also frequently visited the Reconnaissance Department, one of the major agencies involved in the abductions. Abductions from sea generally took place between midnight and 3 am. The DPRK vessel were disguised to look like a Japanese vessel (with Japanese inscriptions), and approached isolated Japanese boats close to the coast of Japan. The boats were attacked, the youngest and smartest crew taken and the boat sunk, drowning the unwanted members of the crew. DPRK spies sunk Japanese vessels by disconnecting the pump in the engine room which caused the boat to flood and sink within one to two hours.[1439]

928. Japanese nationals were commonly kidnapped to further espionage and terrorist activities. They were used to teach the Japanese language, accent and culture to DPRK spies in training; to enable the study of Japanese identification documents in order to better falsify them; and allow DPRK agents to pass themselves off as being Japanese, using the identity of the abducted person.[1440] For example, in 1987, two DPRK agents travelling on Japanese passports and passing themselves off as Japanese nationals planted a bomb in an

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[1434] Japan, Ministry of Foreign Affairs, "Japan-DPRK Pyongyang Declaration", 17 September 2002. Available from http://www.mofa.go.jp/region/asia-paci/n_korea/pmv0209/pyongyang.html.

[1435] TLC040.

[1436] Mr Lee Jae-geun, Seoul Public Hearing 23 August 2013, morning; TLC022.

[1437] TLC022.

[1438] TLC040.

[1439] TLC022.

[1440] TLC040.

overhead luggage compartment on Korean Air Flight 858 from Bagdad via Abu Dhabi and Bangkok to Seoul causing its explosion over the Andaman Sea, killing all 115 people on board. The two agents were arrested at the airport of Bahrain after which they attempted suicide. The male agent died, but the female agent, Ms Kim Hyon-hui, survived and later confessed that she and her partner were DPRK nationals and received orders to blow up the airplane from Kim Jong-il in an effort to disrupt the presidential election and 1988 Seoul Olympics. Accounts of abductions of other nationals reveal abductors to have been persons who held themselves out to be Japanese.[1441]

929. Office 35 and the Operations Department of the Central Committee of the Workers' Party of Korea and the Bureau of Reconnaissance under the KPA were amalgamated in 2009 to form the "General Reconnaissance Bureau", which formally belongs to the KPA.

930. At the press conference in 2002, Japanese Prime Minister Koizumi said "I stated that there must be no more cases of unidentified ships. Chairman Kim Jong-Il responded that it *was thought to be the work of certain elements of the military authorities* and that he intended to look into the matter further and take appropriate measures to ensure that no such case ever occurs again" (emphasis added).[1442] The Commission finds that these abductions have not been conducted by rogue elements of the military. Instead, they were targeted attacks carried out under the apparent orders of Kim Il-sung and subsequently Kim Jong-il.

931. The admission, by Kim Jong-il, of the abduction of 13 Japanese nationals is clearly not the full truth. The Government of Japan has satisfied itself beyond reasonable doubt that 17 Japanese nationals (nine women and eight men) have been abducted, five of whom have returned to Japan. The Japanese police continue to investigate approximately 860 cases of missing persons that have not been ruled out as being abductions of Japanese to the DPRK.[1443] The International Coalition to Stop Crimes Against Humanity in North Korea (ICNK) Japan team, a consortium of Japanese groups working on issues relating to the disappearance of Japanese nationals (and human rights in the DPRK), submitted to the Commission that the number of Japanese nationals abducted by the DPRK is at least 40, and probably over 100.[1444]

932. In the absence of the full cooperation by DPRK, the Commission is unable to resolve exactly the number of Japanese nationals who were abducted from Japan and taken to DPRK. However, the Commission finds that it is probable that at least 100 Japanese nationals have been abducted by the DPRK. Reasons for the abductions are believed to include the teaching of foreign languages in spy and military training schools, for the technical expertise of the abductees and, in the case many of the abductees, to be "given" in marriage to foreigners in the DPRK. As noted in section IV.C, the protection and maintenance of a "pure Korean race" is a key feature of DPRK society and great effort is made to prevent the birth of mixed race Koreans. Japanese nationals, in particular, appear to have been segregated from other groups in an effort to encourage growth of the Japanese population in the DPRK with a view to inspiring a revolution in Japan at a later date.

[1441] See section (g) below.

[1442] Japan, Ministry of Foreign Affairs, "Opening Statement by Prime Minister Koizumi Junichiro at the Press Conference on the Outcome of his Visit to North Korea". Available at http://www.mofa.go.jp/region/asia-paci/n_korea/pmv0209/press.html

[1443] Submission to the Commission: The Government of Japan. This number fluctuates as cases are opened and closed. The current number can be found at Japanese National Police Agency Webpage. Available from http://www.npa.go.jp/keibi/gaiji1/abduct/index.html.

[1444] Submission to the Commission: ICNK Japan Team.

(i) *Abductions from Japan*

933. In 2002, at his meeting with Japanese Prime Minister Koizumi, Kim Jong-il admitted to the abduction of 13 Japanese nationals.[1445] After the admission, five nationals were permitted by the DPRK to visit Japan, and all remained there. The DPRK has stated that the additional eight Japanese nationals whom it abducted had subsequently died. However no plausible evidence was provided in support of their assertion.

Ms Yokota Megumi - 15 November 1977

934. Ms Yokota Megumi was 13 years old when she was taken by force on her journey home from school in the coastal area of Niigata prefecture, Japan. In 2002, when Kim Jong-il admitted to her abduction, Ms Yokota was alleged to have died at the age of 29. However, the death certificate provided in support of this assertion appears to have been falsified, and DNA tests on the remains said to be hers were not a positive match. Megumi appears to have married Mr Kim Young-nam of the ROK, also abducted in his teens by the DPRK. Together they have one daughter.[1446]

935. Ms Yokota's parents, Mrs Yokota Sakie and Mr Yokota Shigeru, are tireless campaigners for all abductees. They appeared before the Commission at the Tokyo Public Hearing in August 2013:

> *"[When] I saw the photos for the first time [of Megumi as a] grownup... We wept so much. ... For the first time, I saw her in the photo, and we really were so sad. We looked for her everywhere last 20 years, and now she is in Pyongyang, and we felt so bad. I finally discovered her, and still we cannot save her, and we said sorry for her ... I wept so much that we still cannot help her."*[1447]

Ms Taguchi Yaeko – June 1978

936. Ms Taguchi Yaeko disappeared from Tokyo in June 1978, leaving behind two very young children. Former DPRK agent Kim Hyon-hui, convicted of bombing a Korean Air jet in November 1987, is believed to have been taught how to pass herself off as Japanese by Ms Taguchi. The DPRK alleged that Ms Taguchi died at age 30. However, the DPRK authorities have not provided any credible evidence in support of their claim.

Mrs Chimura (formerly Hamamoto) Fukie and Mr Chimura Yasushi – 7 July 1978

937. Mrs and Mr Chimura were abducted whilst enjoying a social evening together near the coast of Obama, Fukui Prefecture, Japan. Mrs and Mr Chimura were two amongst the five abductees permitted to return to Japan in 2002 after the acknowledgment of their abduction. They did not return to the DPRK. Their children were subsequently able to join them in Japan in 2004. In 2006, the Japanese Government issued an arrest warrant for Shin Gwang-su, the North Korean agent believed to have been responsible for their abduction.

Mrs Hasuike Yukiko (formerly Okudo) and Mr Hasuike Kaoru – 31 July 1978

938. Mrs and Mr Hasuike were abducted from the coast of Kashiwazaki in Niigata Prefecture, Japan. Mrs and Mr Hasuike were two of the five abductees returned to Japan in 2002, and their children in 2004. In 2006 and 2007, the Japanese authorities issued arrest warrants for three DPRK agents believed to be associated with the couples' abduction: Choi Sun-chol, Han Myeong-il and Kim Nam-jin.

[1445] Three of these cases are contained below under "abductions from abroad".

[1446] DNA tests have established the child to be that of Ms Yokota Megumi and Mr Kim Young-nam. Samples for the tests were provided by the respective grandparents.

[1447] Tokyo Public Hearing, 29 August 2013, morning (01:25:00).

Ms Masumoto Rumiko and Mr Ichikawa Shuichi – 12 August 1978

939. The third couple acknowledged to have been taken in the summer of 1978, Ms Masumoto and Mr Ichikawa disappeared after going to watch the sunset on a beach in Fukiage, Kagoshima Prefecture, Japan. The DPRK claimed that the two married in July 1979 and died at the ages of 27 and 24 respectively. As with the other victims alleged to be deceased, credible evidence establishing the deaths has not been provided. Ms Masumoto's brother, Mr Masumoto Teruaki, submitted to the Commission:

> *"My family was worried sick about Rumiko. Every single day we prayed that she was alive somewhere. We grieved for a long time, but after a while we stopped talking about it, because every time we did, it reopened the wounds and my mother would start crying again as if it happened yesterday.*
>
> *We tried to get on with our lives, but our smiles were forced. Rumiko was always in our thoughts. We lost the ability to enjoy life at all. The pain of losing a sister I loved has never gone away, so I can only imagine what torment my parents have gone through."*[1448]

Ms Soga Hitomi and Mrs Soga Miyoshi– 12 August 1978

940. Ms Soga and her mother were abducted from Sado Island, Niigata Prefecture, Japan, on their way home from shopping. The DPRK has acknowledged the abduction of Ms Soga Hitomi, but not that of her mother Mrs Soga Miyoshi. Ms Soga Hitomi was permitted to return to Japan in 2002 after the acknowledgment of her abduction.

941. In the DPRK, Ms Soga Hitomi was married to Mr Charles Jenkins, one of the five US Army deserters who crossed over to the DPRK from their posts in the ROK voluntarily after the Korean War. Mr Jenkins - who deserted his post in the ROK in 1965 – reports having lived in close proximity to the three US nationals who crossed over to the DPRK before him, Mr Larry Allen Abshier (1962), Mr James Joseph Dresnock (1962) and Mr Jerry Wayne Parrish (1963).[1449] According to Mr Jenkins, the four were closely monitored and managed with their freedom of movement seriously constrained. The four unsuccessfully attempted to escape in 1966 by seeking asylum in the Russian Embassy, after which they were convinced there was no chance they could leave the DPRK. They had crossed voluntarily, but found themselves trapped in captivity. Mr Jenkins and the couple's two daughters were able to reunite with Ms Soga in Japan in 2004.[1450]

942. Ms Soga, who was only 19 at the time of her abduction, was detained at the same location as Ms Yokota Megumi during the first year after her arrival. Although the two were closely monitored and prevented from communicating in Japanese together, they became close.

Mr Hara Tadaaki – June 1980

943. Mr Hara Tadaaki disappeared in Miyazaki Prefecture, Japan, in June 1980. DPRK agent Shin Gwang-su later passed himself off as Mr Hara in Japan.[1451] He also used his passport and travelled to different countries including to the ROK. He was arrested, tried

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[1448] Submission to the Commission: Masumoto Teruaki.

[1449] A fifth defector Mr Joseph T White is believed to have crossed into the DPRK in 1982, however Mr Jenkins does not appear to have met him. A sixth American serviceperson, Mr Roy Chung, is reported to have defected to the DPRK from the US Army whilst on service in West Germany in 1979.

[1450] Charles Robert Jenkins with Jim Frederick, *The Reluctant Communist: My Desertion, Court-Martial and Forty-Year Imprisonment in North Korea* (Berkeley, University of California Press, 2008), p. 171.

[1451] TSH037.

and imprisoned in the ROK. After his arrest, he admitted to the ROK authorities that he was involved in abducting Mr Hara and relocating him to the DPRK. The DPRK claimed that Mr Hara died of hepatic cirrhosis in 1986. Journalist Mr Ishidaka Kenji, who uncovered much of the information about the abduction of Japanese nationals in the course of his work, told the Commission of the abduction process of Mr Hara:

- *"The three people cooperated with Shin Gwang-su, followed his order, and kidnapped a chef working in Osaka whose name was Hara Tadaaki, and he brought this man to Kyushu where there he was met by other spies from North Korea put him in a bag, and forced him to get on the vessel to take him back to the DPRK."*[1452]

944. The Government of Japan has asserted that an additional four Japanese citizens have been abducted by the DPRK and have sought their release and return to Japan.[1453] DPRK authorities maintain that these four Japanese nationals never entered the DPRK.

Mr Kume Yutaka – 19 September 1977

945. Mr Kume Yutaka disappeared from the coast of Ushitsu, Ishikawa prefecture, Japan. A former security guard, Mr Kume was deceived by a money-making idea by a Japanese Korean, working as a DPRK agent. The agent asked Mr Kume to take money on a rubber boat to people on a boat anchored away from the shore. Mr Kume did not return. Police were aroused to the suspicious behaviour and held the agent for 23 days, but ultimately were unable to gather enough evidenvce to prove that he was responsible for Mr Kume's disappearance as they were unaware of Mr Kume's intentions before departing Japan.[1454] The DPRK maintains Mr Kume did not enter the DPRK.

Ms Matsumoto Kyoko – 21 October 1977

946. Ms Matsumoto Kyoko disappeared on the way to a knitting school in Tottori prefecture, Japan. A neighbour witnessed Ms Matsumoto talking to two strangers. Ms Matsumoto's sandal was found near the beach, giving rise to the suspicion she was taken by boat by the strangers.[1455] During talks between the DPRK and Japan, DPRK has stated that it cannot confirm that Matsumoto Kyoko entered the DPRK.

Mrs Soga Miyoshi – 12 August 1978

947. Mrs Soga Miyoshi was abducted with Ms Soga Hitomi (see above). The DPRK maintains Mrs Soga did not enter the DPRK.

(ii) *Abductions from abroad*

948. A group of Japanese nationals attracted to Communism, and/ or *Juche* ideology, travelled to the DPRK of their own volition in the early 1970s, and later participated in the abduction of Japanese nationals abroad.

949. The Yodo-go group comprised nine Japanese nationals who hijacked a plane and flew it to the DPRK in 1970. The group belonged to the Red Army Faction, a small group of radical left activists that split from the Japanese Communist League in 1969. Police uncovered the faction's plot to kidnap the then Japanese Prime Minister Sato Eisaku,

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[1452] Tokyo Public Hearing, 29 August 2013, morning (00:19:25).

[1453] The fourth case, that of Mr Tanaka Minoru, is contained below, under "abductions from abroad".

[1454] Ishidaka Kenji, *Koredemo shira wo kiru noka kitachousen: nijonjin rachi zokuzoku todoku 'shozai no akashi'* (North Korea, do you still deny?: The Abduction of Japanese Continues), 2nd ed. (Tokyo, Kobunsha, 2003).

[1455] Tottori Prefecture website, "Rachi higaisha Matsumoto Kyoko san" (abduction victim Kyoko Matsumoto). Available from http://www.pref.tottori.lg.jp/93163.htm.

leading to the arrest of over 50 members and the decision of the nine to flee the country.[1456] On 31 March 1970, under the direction of the ideological leader Mr Shiomi Takaya and operational leader Mr Tamiya Takamaro, the group hijacked Japan Airlines Flight 351 carrying 129 people from Tokyo to Fukuoka, flying it to the DPRK (after offloading the passengers in Fukuoka and Seoul).[1457] The nine became known as the "Yodo-go Group" as the plane they hijacked was the "Yodo-go". The group had planned to go to Cuba and hoped the DPRK would send them there, but they remained in the DPRK.

950. The wives and partners of the Yodo-go Group were later allowed to travel to the DPRK. The unmarried members were married to Japanese women in the DPRK. The Group and their spouses resided in the purpose built "Japan Revolutionary Village" in the outskirts of Pyongyang. One of their primary tasks was to have children to build future generations of revolutionaries that could together bring about a revolution in Japan as Kim Il-sung believed that three generations of revolutionaries were needed to create the ultimate communist paradise. The Yodo-go members and their spouses received extensive training in *Juche* ideology and Kimilsungism, before being tasked with carrying out revolutionary activities at the request of the Kim Il-sung.[1458]

- Ms Yao Megumi, a Japanese citizen with an interest in *Juche* ideology, travelled to the DPRK in February 1977 to visit the DPRK for several months. Once there, she was held captive, forced to marry Mr Shibata Yasuhiro, a Yodo-go member, and have children. In 1983, whilst captive in the DPRK, she was forced to lure a young Japanese woman to the DPRK under the orders from Kim Il-sung and under the monitoring of the Workers' Party of Korea 56th Division. This order resulted in Ms Yao luring Japanese student Ms Arimoto Keiko from London to the DPRK for the purposes of marrying and having children with Japanese abductee Mr Ishioka Toru or Mr Matsuko Kaoru, as part of the plan populate a group to be revolutionaries in Japan.[1459]

951. The Workers' Party of Korea, 56th Division, conducted its European operations from the DPRK consulate in Zagreb.[1460] The Vice-consul in Zagreb, Mr Kim Yu-cheol, worked within the 56th Division and supervised the activities of the Yodo-go Group and their spouses. Vice-consul Kim and Yodo-go leader Tamiya orchestrated the abduction of Japanese people from abroad upon orders from Kim Il-sung to "acquire" Japanese and bring them to the DPRK to join the revolutionary force.[1461]

Mr Tanaka Minoru – in or around 1978

952. Mr Minoru disappeared after departing for Europe in 1978. In 2005, the Government of Japan identified Mr Tanaka as an abductee and demanded his release from the DPRK. The DPRK has not responded to these demands.

[1456] The Committee for Human Rights in North Korea, *Taken!: North Korea's Abduction of Citizens of Other Countries* (2011), p. 35.

[1457] Japan's National Police Agency Report, Focus: *The Growing Severity of the International Terror Situation: Movements of the Japanese Red Army and the "Yodo-go*" Group, vol. 271, as cited in The Committee for Human Rights in North Korea, *Taken!: North Korea's Abduction of Citizens of Other Countries* (2011), p. 35.

[1458] Former DPRK agent TSH059.

[1459] TSH055.

[1460] Former DPRK agent TSH059.

[1461] Former DPRK agent TSH059.

Mr Ishioka Toru and Mr Matsuki Kaoru – May 1980

953. Friends Mr Ishioka and Mr Matsuki, have been acknowledged to have been abducted from Europe by DPRK Agents. The two were lured to the DPRK by two Japanese women married to Yodo-go members, Ms Mori Yoriko and Ms Wakabayashi (formerly Kuroda) Sakiko.[1462] Although acknowledging their capture, the DPRK maintains the two men died at relatively young ages. However, the DPRK has failed to provide credible evidence to substantiate this claim.

Ms Arimoto Keiko – July 1983

954. Ms Arimoto was lured to the DPRK by Ms Yao Megumi in 1983. Ms Arimoto had completed study at language school in London and was about to return to Japan in July 1983, when she met Ms Yao who convinced her to consider taking a part time marketing job in the DPRK. Under the instruction of the Yodo-go leader (in the DPRK) and the supervision of Uomoto (formerly Abe) Kimihiro (Yodo-go member) and North Korean agent Kim Yu-chol (vice-consul of the DPRK to the former Yugoslavia based in Zagreb), Ms Yao arranged for Ms Arimoto to meet the marketing company managers (Uomoto and Kim) in Copenhagen. The four met in a restaurant after which Ms Arimoto travelled to the DPRK with Kim, and was never seen again. Ms Arimoto was targeted by DPRK agents because they "needed" a young Japanese woman to be the wife of a Japanese man that had earlier been abducted.

955. A letter received by Mr Ishioka's parents in Japan in 1988 informed them Mr Ishioka, Mr Matsuki and Ms Arimoto were in the DPRK. The letter appeared to have been sent from Poland and was written on the insurance document of Ms Arimoto Keiko.[1463] The letter did not contain much detail except to say that they cannot write why they are there but they are well. Enclosed with the letter was a photograph of a baby believed to be Mr Ishioka and Ms Arimoto's child. Mrs and Mr Arimoto attempted for many years to seek consular assistance to make contact with their daughter, but as Japan and the DPRK do not have diplomatic relations, the Government of Japan consistently advised there was nothing that could be done.

956. In 2002, in acknowledging the abduction of the three, the DPRK advised that Ms Arimoto, Mr Ishioka and their young child had all died by gas poisoning in their home, considered to be somewhat unlikely circumstances in the DPRK. No further detail or credible evidence has been provided to substantiate their alleged deaths. Despite the DPRK's insistence that eight abductees were deceased, on behalf of all the families of abductees, Ms Arimoto's mother, Mrs Arimoto Kayoko told the Commission in Tokyo that they continue to seek answers about their daughter and all of the abductees: *"We cannot stop our activities to save the victims of abductions."*[1464]

Mr Tanaka Minoru – June 1978

957. In 2005 the Japanese government identified Mr Tanaka Minoru as an abductee, lured to the DPRK from Europe.

958. Mr Tanaka Minoru a former restaurant worker in Hyogo Prefecture, Japan, disappeared after departing Japan for Europe in June 1978. During talks between the DPRK and Japan, DPRK has stated that it cannot confirm that Mr Tanaka entered the DPRK.

[1462] TSH055.

[1463] TSH033, TSH034.

[1464] Tokyo Public Hearing, 29 August 2013, morning.

(iii) *Additional cases*

959. The Commission finds that there is credible evidence that many more Japanese nationals have been abducted.

- A former official in Office 35 of the Central Committee of the Workers' Party of Korea personally knew 10 Japanese women to have been abducted (one more than officially recognized by the Japanese government).[1465]

- Ms Yao who was directly involved in the abduction of one Japanese national has indicated that hundreds of people could have been abducted. She told the Commission:

  "I don't know exactly, but probably hundreds of Japanese nationals. Everyone [Yodo-go members and spouses at the Revolutionary Village] was carrying out abductions, they were only ever spoken about as 'jobs' or 'activities'; people would say x person completed two successful jobs. That is how I knew everyone was doing it."[1466]

- A former official engaged with the Reconnaissance Bureau of the Korean People's Army, who was involved in the abduction of Japanese nationals at sea, told the Commission of his involvement in the abduction and enforced disappearance of Japanese nationals at sea.

  In November 1979, that former DPRK official went on a disguised ship near the coast of Japan in search for isolated vessels with few crew members on board. The targeted boat had six crew members on board. They captured the youngest and took him back to the DPRK, killing the other five crew members.[1467]

- The Investigation Commission on Missing Japanese Probably Related to North Korea (COMJAN), a non-government investigative body in Japan is investigating 470 missing persons cases in Japan. From its research, COMJAN, believes there to be approximately 280 "likely" Japanese abductees, of which 77 are considered to be "highly likely".[1468] The Commission believes that many, if not all of the cases COMJAN currently considers to be "highly likely abducted" have in fact been abducted. Of the cases that are very likely linked to the DPRK, several patterns can be seen. These include the abduction of persons of similar professions (such as engineers and printers), disappearances in particular timeframes, adults who were orphans, and women from a particular area.

960. Several of the persons suspected to have been abducted have been seen in the DPRK. For example, a DPRK citizen has reported seeing a person that resembles Mr Hidaka Nobuo, one of three "missing printers". He disappeared from Tokyo in September 1967. Three printing engineers are believed to have been abducted by the DPRK from Tokyo between 1966 and 1968. Each of the three derived from a different province in Japan, lived alone in Tokyo and worked at printing companies. They are believed to have been targeted for their knowledge and skill with printing machinery, potentially for the purpose of producing counterfeit money.

961. One of the higher profile cases of suspected Japanese abductees is Mr Fujita Susumu. Mr Fujita, a university student disappeared after leaving home for a part-time job on 7 February 1976. According to information COMJAN has received, he was detained at a

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[1465] TLC040.

[1466] TSH055.

[1467] TLC022.

[1468] Tokyo Public Hearing, 29 August 2013, afternoon, and exhibit T3.

hospital by DPRK agents, and taken to the DPRK. A photograph provided by a former DPRK citizen is believed to be that of Mr Fujita. Expert examination of the photograph has revealed similarities between it a photograph of Mr Fujita prior to his disappearance. Investigators in Japan have also received testimony from a former DPRK spy who saw Mr Fujita at the Kim Jong-il Political and Military Academy in Pyongyang. Mr Fujita's case is being pursued by the Working Group on Enforced or Involuntary Disappearances. However to date, the DPRK denies any knowledge of Mr Fujita.

962. The Japanese abductees brought to the DPRK by Division 56 of the Workers' Party of Korea live in a compound near the Japanese Revolutionary Village in which the wider Yodo-go group lived.[1469] Japanese women abducted to the DPRK by Office 35 lived in Pyongyang. Some of the Japanese women abducted by Office 35 became pregnant by DPRK agents and were sent to live in a *Milbong Chodeso*, guarded houses in several locations. Once the children were born, they were taken to live with the agent's parents. The mothers were then only permitted to visit their children on a weekend. The women remain under the supervision and surveillance of Office 35 whilst in the DPRK. They require permission to leave their house, visit their children or engage in any other activity.[1470]

(g) Late 1970s: abduction and enforced disappearance of women from other countries

963. From 1977, foreigners of other countries were similarly abducted by the DPRK. The abductions have been carried out by force at times, and by luring the foreigners to the DPRK in other cases. Reasons for the abductions include teaching foreign languages in spy and military training schools, for technical expertise, and, in the case of many abductees, to be "given" in marriage to foreigners in the DPRK, to prevent inter-racial marriage with ethnic Koreans. As noted in section IV.C, the "pure Korean race" is a key feature of DPRK society and great efforts have been made to prevent the birth of mixed race Koreans.

- For example, the US army deserters were provided with cooks who had been divorced from their husbands because they were believed to be infertile. According to Mr Jenkins, the cooks were *"basically supposed to be unofficial wives, fulfilling all of the roles that wives traditionally fulfil"*. The Americans were expected to have sexual relations with the cooks, and, on at least one occasion, the lack of sexual relations in one house resulted in the beating of the man. At In 1978, the cook assigned to Mr Abshier became pregnant and "disappeared overnight".

> *"Following Abshier's cook accidentally getting pregnant, our leaders told us that the Organization had decided that the policy of providing us female North Korean cooks was not working and that they had found us four Arab women from Lebanon to be our wives."*[1471]

964. It is notable that all of the documented abductions of nationals from countries other than the Republic of Korea and Japan occurred after Mr Abshier's Korean cook became pregnant by him, and the four deserters were later paired with non-Korean women. This suggests that at least some of the non-Korean women abducted by the DPRK were taken for the purpose of becoming (sexual) partners to non-Koreans within the DPRK as a means to avoid compromising the purity of the Korean race.

[1469] TSH055.

[1470] TLC040.

[1471] Charles Robert Jenkins with Jim Frederick, *The Reluctant Communist: My Desertion Court-Martial and Forty-Year Imprisonment in North Korea*, pp. 60-63, 72.

1978: enforced disappearance of four Lebanese women

965. In 1978, four Lebanese women were lured to the DPRK;[1472] According to Mr Charles Jenkins, they were to be the wives of four US army deserters.[1473] They had been told that they were going to secretarial jobs in Tokyo paying $1000 per month. Two of the women escaped a year and a month after their abduction when visiting Belgrade. The other two women were "given" to US deserters Mr James Dresnock and Mr Jerry Parish to be wives. The mother of one of the abductees remaining in the DPRK found where the women were, and negotiated their release. According to Mr Jenkins, one of the women was pregnant by US Army deserter Mr Parish when she left the DPRK. As this created difficulty for her and her family, elected to return to the DPRK to be with the child's father.

1978: abduction of a Thai woman from Macao

966. Ms Anocha Panjoy was abducted on 2 July 1978 from Macao. According to Mr Jenkins, who lived in the apartment alongside Ms Panjoy in the DPRK, Ms Panjoy has said she had been taken against her will to the DPRK after being forced on a boat in Macao. According to a newspaper article published three days after her disappearance, Ms Panjoy had gone on an outing with a man who held himself out to be Japanese. The article quoted a friend of Ms Panjoy who said Ms Panjoy had told the friend that if she did not return from her outing by 6 pm. the police should be notified.[1474] This information is consistent with the information Mr Jenkins said he was told by Ms Panjoy after her arrival in the DPRK. Ms Panjoy was "given" to US Army deserter Mr Abshier.

967. The Commission conducted an investigation in Bangkok, Thailand in September 2013 and received testimony from the family of Ms Panjoy. The Royal Thai Government has never acknowledged Ms Panjoy's disappearance as a case of abduction, rather it holds that her disappearance is a case of "missing person". Nonetheless, the Government said that it has repeatedly requested information about Ms Panjoy from the DPRK authorities but none has been forthcoming. The National Human Rights Commission of Thailand finalized its report about Ms Panjoy's case in January 2014. The Commission has recommended to the Royal Thai Government that the Ministry of Foreign Affairs should continue to pursue her case.

968. The Commission finds that the evidence is available and sufficient to prove that Ms Panjoy was abducted while in Macao and then taken to DPRK. A key factor in this conclusion is the testimony of Mr Charles Jenkins and evidence including a photograph of his family in which Ms Panjoy is also depicted. The Commission concludes that she is still in the DPRK today.

1978: abduction of two Chinese women from Macao

969. Two Chinese women, Ms Hong Leing-ieng (alternate spelling: Kong Lingying) and Ms So Moi-chun (alternate spelling: Su Miaozhen) were abducted from Macao and taken to the DPRK at the same time as Ms Anocha Panjoy.[1475] Ms Hong and Ms So worked together at a jewellery store in Macao. According to the accounts of their families, the two women came to know a man they believed to be Japanese in the jewellery store. The man, who is

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[1472] Ishidaka Kenji, *Koredemo shirawo kiruno ka kitachousen: nijonjin rachi zokuzoku todoku 'shozono akashi'* (North Korea, do you still deny?: The Abduction of Japanese Continues'), 2nd ed. (Tokyo, Kobunsha, 2003).

[1473] Charles Robert Jenkins with Jim Frederick, *The Reluctant Communist: My Desertion Court-Martial and Forty-Year Imprisonment in North Korea*, p. 72.

[1474] *Macao Daily News*, 5 July 1978.

[1475] National Association for the Rescue of Japanese Kidnapped by North Korea (NARKN). Available from http://www.sukuukai.jp/narkn/updates.html.

believed to be a DPRK agent, had been generous with the two women, taking them out on occasions to dinner and other forms of entertainment.[1476]

970. Ms Panjoy reportedly told Mr Jenkins, that there were two other abducted Asian women on the boat with her from Macao, but that she was not allowed to speak with them. Shortly before their arrival in the DPRK, the three women were ordered to take off their clothes. Their clothes were later returned to them clean, having been washed. Upon arrival, the three women were lined up for inspection by two senior leaders whose identities are known to the Commission. Each leader reportedly took one of the Chinese women away in their cars. Ms Panjoy did not see either again. Former North Korean agent Ms Kim Hyon-hui has revealed that she was taught Chinese by Ms Hong. Abducted South Korean actress Ms Choi Un-hee (see above) also reported liaising with Ms Hong in the DPRK.

1978: abduction of four Malaysian women and one Singaporean woman from Singapore

971. According to the National Association for the Rescue of Japanese Kidnapped by North Korea, on 20 August 1978, four Malaysian women - Ms Yeng Yoke (age 23), Ms Seetoh Tai Thim (age 19), Ms Yap Me Leng (age 22) and Ms Margaret Ong Guat Choo (age 19), [1477] and one Singaporean woman Ms Diana Ng Kum[1478] - were kidnapped from Singapore. Two men claiming to be Japanese asked an escort agency to send five women to a party on a boat. The five women aged between 19 and 24 disappeared and the boat was never seen again. Ms Choi Un-hee allegedly heard of the Malaysians living nearby in the DPRK.

972. The Commission enquired of both Governments of the Republic of Singapore and Malaysian in pursuit of further details about the alleged North Korean abduction of their nationals. The Singaporean government advised that they do not have any information regarding the case, nor have they been approached by any next-of-kin for consular assistance. The Malaysian government did not respond to this request for further information.

1979: enforced disappearance of a Romanian woman

973. Ms Dona Bumbea disappeared from Italy in 1978 and is believed to have been lured to the DPRK. Ms Bumbea had been studying art in Italy at the time when she met an Italian man claiming to be an art dealer, who convinced her to hold an exhibition in Hong Kong. The two travelled to Pyongyang en-route to Hong Kong at which point the Italian disappeared. Ms Bumbea was kept in the DPRK and "given" to American army deserter Mr Dresnock. Ms Bumbea died in the DPRK and is survived by her two sons, Mr Ricardo Dresnock born in 1981 and Mr James Gabriel Dresnock, born in 1983,[1479] both of whom have been seen in several documentaries including "Crossing the line" (2006) and "Aim High in Creation" (2013). Ms Bumbea's family in Romania have been unable to have any contact with Ms Bumbea's sons despite their wish to.

974. The Government of Romanian has indicated to the Commission that since the publication of Mr Charles Jenkins' book in 2006 providing clear evidence of Ms Bumbea's life in the DPRK, they have requested information of the DPRK authorities about Ms Bumbea. The demarches of the Romanian authorities have been met by the following

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[1476] *Macao Daily News*, 5 July 1978.

[1477] *The Star*, 15 December 2005. Available from http://www.thestar.com.my/story.aspx?file= per cent2f2005 per cent2f12 per cent2f15 per cent2fnation per cent2f12876706&sec=nation.

[1478] *The Straits Times*, 17 December 2005.

[1479] TJH040.

response from the DPRK: *"there are no evidence or indications certifying that a Romanian national was abducted under the circumstances."*[1480]

A French woman

975. The Commission of Inquiry has also received information about the alleged abduction of an unknown French woman. According to Ms Choi Un-hee, the French woman was lured to the DPRK after becoming romantically involved in France with a DPRK agent claiming to be a rich Asian heir. The woman apparently travelled to Pyongyang with the man who subsequently disappeared. She was kept in a "guest house" (guarded house) in the DPRK.[1481] It is also believed that Ms Kim Hyon-hui saw the same French woman. Mr Jenkins recalls seeing a French woman during the filming of a movie in which they both participated. However, he does not know if the woman was abducted.[1482]

1. According to contemporaneous reports made by the returned Lebanese abductees, there were three French women in the same camp in the DPRK in which the Lebanese women were kept in.[1483]

2. The Commission considers it very possible that other foreigners, especially foreign women, were abducted by the DPRK. Upon their return, the Lebanese women referenced above reportedly told the Lebanese media they were held in a camp with 28 foreign women, including three French women, three Italian women, two Dutch women and other women from Europe as well as women from the Middle East.[1484]

(h) 1990s to present: abductions from China

976. In reaction to the movement of large numbers of citizens to China that started in the 1990s, operatives of the DPRK's State Security Department have carried out organized abductions in the Republic of China. The victims have been subject to enforced disappearance in the DPRK. Former DPRK officials and others whose flight might reveal sensitive information to the outside world or ROK authorities have been among the primary victims, in addition to nationals of China and ROK who help DPRK citizens escape to China and from there to the ROK.

- Mr Kim Young-hwan, a human rights activist from the ROK who has worked extensively in the border region, testified that at least six ROK nationals and a number of Chinese nationals, mainly of Korean ethnicity, had been kidnapped over the past 15 years. Mr Kim also indicated that the abductions targeted a specific profile of DPRK nationals:

  "There is a lot of kidnapping and terrorism going on at least over the past 15 years. North Korea has set up and managed a kidnapping organization. ... they have sent people to [major cities in China] to kidnap and these kidnappers went as far as cities like Shenyang. But they do not indiscriminately kidnap North Koreans or South Koreans, they abduct important people like those who are still in serving in Bowibu (State Security Department], in the police or those who are in a special relationship with the state. They target North Korean defectors who had once been

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[1480] Letter dated 19 December 2013 to the Commission of Inquiry on the DPRK from the Permanent Mission of Romania.

[1481] Information provided by the National Association for the Rescue of Japanese Kidnapped by North Korea (NARKN).

[1482] TSH054.

[1483] NARKN.

[1484] See HRNK, *Taken!* report, p. 33 (citing statements made by the victims in 1979 to a Lebanese newspaper).

> *or have started in important positions. Even if the targeted person to be kidnapped was not from a special position, if they were found to have been engaged in anti-state political activities in China, they would be the targets of abduction."*[1485]

977. The Commission was able to obtain two court judgments – one from the Republic of Korea; the other from the People's Republic of China – convicting operatives who carried out abductions on behalf of DPRK State Security Department in China. The detailed findings set out in these judgments on the organization of the abductions and the methods followed are mutually reinforcing and are also corroborated by information that the Commission independently obtained during its public hearings, confidential interviews and through submissions.

978. The first judgment was issued in 2005 by the Seoul Central District Court, Republic of Korea.[1486] The findings presented therein build on the confession of the defendant, a Korean-Chinese SSD operative, as well as the testimony of a former DPRK agent who was also directly involved in the abductions. It meticulously details the DPRK's abduction of a pastor from the ROK, Reverend Mr Kim Dong-shik, the abduction of former Japanese national Ms Ryang Cho-oek and her family, and 12 other abductions of DPRK nationals. The defendant was convicted and sentenced to 10 years of imprisonment.

979. The second judgment was issued in 2006 by the Intermediate People's Court of Yanbian Korean Autonomous Prefecture, Jilin Province, China. [1487] It convicts two DPRK nationals and four Chinese nationals with six cases of abduction and a case of illegal detention. The judgment finds that they carried out abductions based on orders issued from the DPRK by senior officials of the DPRK's State Security Department. Among the victims named in the judgment were former Japanese national Ms Ryang Cho-oek and ROK national Reverend Kim Dong-shik. The two DPRK nationals among the SSD operatives were convicted to imprisonment of 3 years and 7 months and 3 years and 6 months. The Chinese nationals received sentences ranging from 6 months to two years of incarcerations.

980. The judgments, additional witnesses testimony heard by the Commission and other information received shows that an entire team of SSD operatives of DPRK and Chinese nationals carried out a large number of meticulously organized abductions on behalf of the DPRK . They were retained by and acted under the orders and close operational guidance of SSD agents stationed in Hoeryoung, North Hamgyong Province, DPRK. An SSD "safe house" in Hoeryoung known as the *Goksan* factory was used as the base for the operations. The judgments, from China and the ROK, name particular SSD commanding officers stationed in North Hamgyong Province who masterminded the operations. Independently, the Commission received information implicating the same individuals from a former SSD agent who had been stationed in China, and another witness who runs operations to help DPRK citizens flee their country.[1488]

- In January 2000, a team of SSD operatives abducted the Reverend Kim Dong-shik in Yanji City, in eastern Jilin Province, China. Reverend Kim was targeted by the DPRK, because he was helping DPRK citizens flee from China to the ROK. The SSD operatives lured him into a trap and took him by force to the Democratic People's Republic of Korea, where he was received by SSD operatives. In the DPRK, Kim Dong-shik was detained in an underground interrogation detention centre of the SSD in Hoeryoung, North Hamgyong Province. Mr Jeong Gwang-il, who was detained in the same SSD underground prison at the same time as Mr Kim Dong-shik, testified before the Commission that he saw and spoke with Kim Dong-shik there. Mr Kim Dong-shik walked with a crutch and he appeared to have sustained injuries pointing to torture.[1489] According to the Korea Institute for National Unification, Mr Kim Dong-shik died in detention in February 2001 as a result of injuries sustained under torture.[1490]

[1485] Seoul Public Hearing, 24 August 2013, afternoon (00:20:00).

[1486] Seoul Central District Court, 21 April 2005 (Case: 2005Gohap43).

[1487] The judgment indicates that is based on closed proceedings, because the court considered that it involved state secrets. The Commission obtained a copy of the judgment from a reliable source.

[1488] TBG031 and TLC026.

- In February 1999, SSD agents abducted Ms Ryang Cho-oek and three of her family members. The primary victim was a 61-year old Japanese women, who had migrated from Japan in the 1960s and later became a DPRK citizen. According to the orders transmitted to the operatives on the ground, the SSD in Hoeryoung had received "superior orders" to abduct the victim and her family by any means necessary as it would become a "disgrace for the DPRK if Ms Ryang Cho-oek and her family make it to Japan."[1491]

981. In the period of 1998-2000, the following people were also abducted from China through meticulously planned operations ordered by and carried out on behalf of the DPRK's State Security Department:[1492]

- In March 1998, Mr Chun Sung (Chinese: Qian Cheng), a DPRK national, was abducted by the DPRK in 1998 in Yanji, Jilin Province, China. He was apparently targeted because the State Security Department suspected him of having cooperated with intelligence authorities of the Republic of Korea.
- In August 1998, Mr Choi Chun-sok (Chinese: Zhu Yuan), a former journalist from the DPRK who had fled and obtained ROK nationality, was abducted by the SSD in Yanji Jilin Province, China.
- Mr Ryu Young-beom was abducted by the DPRK in January 1999 in Longjiang City, Jilin Pronvince, China. Ms Park Bun-oek, who worked with him, was abducted one month later in Antu County, Jilin Province, China.
- In February 1999, Ms Seok Du-oek, was abducted by the DPRK in Longjiang City, Jilin Province, China.
- In February 1999, Mr Paek Seung-kuk suspected by the DPRK of working for the intelligence services of the Republic of Korea, was abducted in Longjiang City, Jilin Province, China.
- In February 1999, SSD operatives abducted a soldier of the Korean People's Army, who had fled to Sanhe Town, Longjiang City, Jilin Province, China.
- In February 1999, SSD operatives, acting in collusion with two KPA military security command officers, unsuccessfully attempted to abduct two soldiers from Longjiang County, Jilin Province China. They had been involved in helping people flee the DPRK.

[1489] Testimony of Jeong Gwang-il at the Seoul Public Hearings, 21 August 2013, morning, with additional details on the injuries sustained by Reverend Kim provided in a confidential interview with Jeong Gwang-il. Relevant evidence was also received from witness EJH003.

[1490] KINU, *White Paper on Human Rights in North Korea* (2006), p. 252; Christian Solidarity Worldwide, "North Korea: A Case To Answer – A Call To Act", p. 57, tendered to the Commission by Reverend Stuart Windsor at the fifth session of the London Public Hearing (exhibit L4).

[1491] Seoul Central District Court, 21 April 2005 (Case: 2005Gohap43).

[1492] These cases were found to have occurred according to the Seoul Central District Court, 21 April 2005 (Case: 2005Gohap43), and second judgment referred to above, issued in 2006 by the Intermediate People's Court of Yanbian Korean Autonomous Prefecture, Jilin Province, China.

- In March 1999, SSD operatives abducted Mr Hwang Young-chan from Longjiang City, Jilin Province. He had been a high-ranking official in Pyongyang before his escape to China.
- In March 1999, Ms Rim In-Sook, her husband Han In-chan, two of their daughters, a son and an 8-year old grandson were abducted by the DPRK from Antu County, Jilin Province, China.
- In June 1999, Mr Kim Chang-rock, whom the SSD suspected of being involved in the theft of grain, was abducted from Sanhe Town, Longjing City, Jilin Province by SSD operatives.
- In October 2000, DPRK agents abducted Chinese nationals Jin Zhonglu from Yanji, Jilin Province, China. The victim had earlier defected from the DPRK to China with intelligence information and become a Chinese citizen.
- In April 2001, DPRK agents abducted Mr Jin Huzhe in Jilin Province, China. They threatened to drown him in the Tumen River in order to extract information about another DPRK national, who was their actual target. When the agents discovered that their primary target had already moved from China to ROK, they released Jin Huzhe.

982. The Commission has reason to believe that the DPRK practice of abducting individuals from China was not limited to these abductions, carried out between 1998 and 2001, but has gone on for a long time.

- A former member of the DPRK Escort Command assigned to protect the Supreme Leader and his family, testified that he escaped to China in 1989. After he reached Beijing, DPRK agents who pretended to be diplomats of the Republic of Korea lured him into the Embassy of the DPRK, from where he was forcibly transferred back to Pyongyang. The witness was subsequently detained for several years in Political Prison Camp No. 15 at Yodok, before finally being released.[1493]
- In July 1995, Reverend Ahn Seung-woon was abducted. [1494] He was reportedly later seen on DPRK television and has not been heard of since.
- According to information provided to the Commission by Christian Solidarity Worldwide, DPRK citizens Gil Ji-Man, Kim Cheol-Hun, Kim Cheol-Su and Shim Seong-Shin were allegedly all abducted from China in April 2003. Ms Jin Kyeong-Suk, who had fled from the DPRK to the ROK in 2002, was abducted during a visit to China in August 2004. Mr Kang Jeong, a former DPRK army officer, and Lim Yeong-Hak, who were both involved in helping DPRK citizens flee the country, were allegedly abducted in 2005 from Yanji City, Jilin Province, China.[1495]
- North Korea Freedom Coalition, which brings together 70 non-governmental organiations, reported that Ms Lee Ju-Im, a 73-year old woman, was abducted by DPRK agents from a hospital in China. The agents apparently targeted her, because the DPRK had abducted Ms Lee as a young woman during the Korean War. In April 2008, Mr Lee Gi-Cheon, a 42 year old Chinese citizen of Korean ethnicity, was seized by DPRK agents near the Tumen River. Mr Lee was involved in helping

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[1493] TBG012.

[1494] TLC026 and a written submission from a reliable confidential source. The case is also reflected in the HRNK, *Taken!* report, p. 30.

[1495] See Christian Solidarity Worldwide, "North Korea: A Case To Answer – A Call To Act", p. 57, (exhibit L4).

DPRK citizens escaped and was abducted as he was leading newly arrived DPRK citizens from the border to Yanji, China.[1496]

- A witness testified before the Commission about the 2010 abduction of Mr Chu (full name withheld) from Yanji City, Jilin Province, China. Mr Chu, a Chinese man of Korean ethnicity was also involved in helping people flee the DPRK.[1497] Another confidential submission to the Commission suggested that up to 200 Chinese nationals, mostly ethnic Koreans, may have been abducted.
- Several other witnesses who all run operations helping people flee the DPRK on the Chinese side of the border and regularly visit the area, testified about the continued presence of SSD agents and abduction threats.[1498] One Witness was physically attacked on two occasions by people he identified as SSD agents. He narrowly managed to escape on both occasions.[1499] Other witnesses recounted how they escaped planned abductions, because they received specific warnings by friendly contacts in the Chinese security services.[1500] One former DPRK official who recently escaped the DPRK, reported that he had approached several churches in the border region for help, but was turned away, because the church leaders feared becoming victims of abductions if they helped the witness.[1501]
- A former official related that DPRK officials stationed in Thailand were also instructed to find and abduct high-level defectors that made it to Thailand.[1502]

2. Suffering, discrimination and persecution resulting from disappearances

(a) Suffering and treatment of the disappeared and their descendants in the Democratic People's Republic of Korea

983. The Declaration on the Protection of All Persons from Enforced Disappearance categorizes enforced disappearance as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, and an offence to human dignity.[1503] The disappeared faced many additional human rights violations beyond the violation of the right to leave the DPRK, including discrimination.

984. All persons forcibly disappeared to the DPRK appear to be under special surveillance and had restrictions placed on their movements in the DPRK.[1504] They have been denied the right to recognition as a person before the law,[1505] and the right not to be subjected to torture and other cruel, inhuman or degrading treatment.[1506] Different offices of the Workers' Party of Korea and the Korean People's Army are tasked with the surveillance of different groups of abducted persons. For example, Office 35 (of the Workers' Party of Korea) monitors persons it has abducted, and Department 519 (KPA)

[1496] North Korea Freedom Coalition, "The List' of North Korean Refugees and Humanitarian Workers Seized by Chinese Authorities", 2013, pp. 9 and 20.

[1497] TLC018.

[1498] EJH003, TGC004, TJH010, TJH024.

[1499] TLC026.

[1500] EJH003, TGC004, TJH024.

[1501] TGC004.

[1502] TBG022.

[1503] The Declaration for the Protection of All Persons From Enforced Disappearances 1992, article 1.1.

[1504] ICCPR, articles 9 and 12.

[1505] ICCPR, article 16.

[1506] ICCPR, article 7.

monitors many of the non-Korean abductees.[1507] Monitoring and surveillance of non-Korean disappeared persons in the DPRK can include the bugging of houses to record all sounds, being kept at premises surrounded by guards, and only being permitted to leave their homes weekly in the company of a monitor. Disappeared Koreans (including the ethnic Koreans and their spouses from Japan) integrated into society and under the regular levels of surveillance and monitoring,[1508] have been placed under additional levels of surveillance at work and in their neighbourhoods. Disappeared persons have reported being under "constant surveillance", which was increased around times of international incidents such as the DPRK's capture of the U.S. naval intelligence vessel USS Pueblo in 1968.

985. Surveillance on the family members of persons disappeared by the DPRK is increased when it is suspected the person could or has escaped from the DPRK.[1509] In the case of Oh Gil-nam (see above), Mr Oh's family was detained, to ensure his loyalty whilst he was deployed to lure other ROK nationals from Germany to the DPRK. After his escape during the mission was reported to the DPRK, his wife and two daughters were sent to Yodok political prison camp.[1510]

986. Surveillance and restrictions on movement are so severe that persons forcibly disappeared by the DPRK, who have escaped from the DPRK, have been pursued across the Chinese-Korean border and forcibly returned to the DPRK. For example, Ms Ryang Cho-oek, a Japanese woman who had migrated from Japan in the "Paradise on Earth Movement", and her family were tracked down to their new home in China. The family of four were then forcibly taken from their home and returned to the DPRK.

987. As noted in section IV.B, discrimination based on the *Songbun* system is pervasive in the DPRK. Although most Korean War abductees and non-repatriated POWs were able to integrate into society, because of their origins, they were classified into the hostile class and therefore suffered discrimination from the state as well as discrimination from DPRK citizens for being from the South. For example, the wife of a POW was pressured by authorities to divorce her POW husband in order to save her *songbun*. The woman was then married to a police officer and the POW disappeared.[1511] For this reason, many did not reveal their origins to others, in some cases even to their own family. This double-discrimination, from both the state and DPRK nationals, resulted in restrictions on relations, being placed under special surveillance, restrictions on movements and having limited access to education and employment opportunities, food and medical care.

988. Disappeared persons have been denied access to education and employment opportunities and denied the right to vote. Disappeared ROK nationals have been particularly discriminated against in this regard. [1512] Their children have been unable to join the military or to go to universities.

- Mr Lee Jae-geun, an abducted fisher whose son, born in the DPRK, was unable to go to university, left the DPRK in order that his son could access education "*I left North Korea because they would not allow my son to go to university. If you don't educate your children, the children will not be able to succeed.*"[1513]

[1507] TLC040, TSH054.

[1508] See section IV.A.

[1509] TJH005, TJH021, TJH022, TBG016.

[1510] A/67/370, [31-38].

[1511] TJH029.

[1512] TBG015, TJH029.

[1513] Seoul Public Hearing, 23 August 2013, morning.

- According to a returned POW, children of disappeared Korean nationals working in mines do so by force. He also testified to the Commission that although integrated into DPRK society and in receipt of an identification card, they were precluded from voting for 5 years.[1514]

989. As a vast majority of the forcibly disappeared were subsequently categorized as "hostile" and sent to regional areas, particularly North Hamgyong Province, it is anticipated that those who survived the harsh treatment were likely the first victims of the famine in the 1990s because of their lower status. Being forced to live in remote areas with limited resources has also resulted in the forcibly disappeared having limited access to medical facilities.

990. Although non-Korean abductees were generally kept closer to Pyongyang, spared the full impact of the famine in the 1990s, and provided with access to medical services, they suffered other violations. Not being able to integrate into DPRK society, they were denied the right to work, precluded from leaving their residence and moving freely in society, unable to choose education opportunities for their children and facing sexual and gender-based violations, such as unwanted sexual advances from their monitors and forced marriages.

991. States are under an obligation to guarantee that a child born during the enforced disappearance of her or his mother shall be fully protected.[1515] The birth of each child in such circumstances should be registered to guarantee the child's true identity and information should be provided to relatives and/or legitimately concerned persons.[1516] In violation of these requirements, the DPRK has not enabled children born to abducted persons to be registered with the state of their parents' nationality, nor has it permitted the children contact with their extended family in other countries.

(b) Suffering of the families of the disappeared

992. Family members of the disappeared have been subjected to torture and other cruel, inhuman or degrading treatment.[1517] They have been denied the right to an effective remedy for human rights violations,[1518] including the rights to the truth,[1519] family life and cultural practices.

(i) *Violations of the right to truth*

993. Although the Korean War ended 60 years ago, it has not ended for the families of Korean War Abductees and POWs denied repatriation who to this day have no contact with their family members or knowledge of their fate. Relatives of post-war abductees have told the Commission of the torture of not knowing which they continue to suffer. The mother of an abducted fisher described to the Commission the sadness she feels not being able to

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[1514] TBG015.

[1515] General Comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session, 14 February 2013 (A/HRC/WGEID/98/2), 3.

[1516] Ibid.

[1517] ICCPR, article 7.

[1518] ICCPR, article 2.

[1519] On the violations entailed in enforced disappearances and their continuous nature, see Declaration for the Protection of All Persons from Enforced Disappearances, adopted by General Assembly resolution 47/133 of 18 December 1992, preamble and article 17.

communicate with her abducted son, and how she longs to at the very least be able to mail letters to him or telephone him.[1520]

(ii) *Violations of the right to family life*

994. Human rights law recognizes the family is a fundamental and natural unit which requires the full protection of the state. It specifies state obligations to keep families together and reunify them when they become separated.

995. Despite the establishment of the separated family reunions between the two Koreas, very few family members of the forcibly disappeared in the ROK have been able to participate and reunite even temporarily with their loved ones.

996. Few postwar ROK abductee family members have been able to attend, but they do so on the condition that no mention is made of the abduction.[1521] Most postwar abductee family members that have applied to attend a separated family reunion have received notification at the life status verification stage of the process, that their loved one has since deceased or their life status cannot be verified. Given the high level of surveillance on those of South Korean origin, and the nature of DPRK monitoring in society in general, from the *Inmin-wiwon-oei* (regional level) down to the *Inminban* (Neighbourhood Watch), the Commission finds it difficult to believe that life status verification is not possible in the DPRK.

997. For victims from countries other than the ROK, aside from the five abducted Japanese nationals returned to Japan in 2002, there have not been any initiatives to permit the forcibly disappeared to communicate with their families nor allow their return. Several witnesses articulated to the Commission their pain resulting from the denial of their family life.

- Mrs Kim Hang-tae, an 85 year old woman, spoke of the torment of seeing loving relationships around her and wishing she could have had the same:

  "If at least I could find the body of my husband, I would like to lay over his body… Whenever I see somebody holding hands, whenever I see somebody, grandfather holding hands with their grandchildren, I wish I could do the same. Whenever I see children loved by their father, I mean, my husband didn't do anything wrong. If he had committed a crime and he was beaten up and killed for that, I wouldn't feel this bad. But this is just unbelievable. I cannot admit what happened to me. My husband was a good man, a decent man. Half of her is gone when a wife was lost her husband. It's like having lost an arm. I am waiting until this day. I am holding hands with my daughter waiting the return of my husband."[1522]

- Mrs Yokota Sakie, mother of abducted 13 year old Ms Yokota Megumi told the Commission how she hoped the right to family would be understood by the new leader, and all the abductees returned:

  "Kim Jong-un is also part of a family. He is a father. He has family members. He should understand how it feels for a family member to lose someone, a beloved one. That is something I would like to communicate to them through the Japanese

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[1520] TSH021.

[1521] Only one witness that spoke with the Commission had attended a separated family reunion, but the Commission does not conclude that this has been the total sum of abduction related family members that have been able to attend the separated family reunions.

[1522] Seoul Public Hearing, 23 August 2013, afternoon (02:41:51).

> *Government. These wrongdoings should be stopped from both parties so that we can create a peaceful world from both parties."*[1523]

(iii) *Violation of cultural rights: inability to practice cultural customs relating to death*

998. Many of the victims of historical abductions such as Korean War Abductees, POWs, fishers and returnees that disappeared in the 1950s are believed to have died in the North as a result of the passage of time since their abduction. For family members of these abductees, not only have they endured immense suffering for the loss of their loved one, but have been unable to satisfactorily mourn their deaths.

Death in Korean society

999. Knowing and acknowledging the date of a loved one's death in both Koreas and in Japan is fundamental to cultural practices and beliefs about the after-life. After death, the body of the deceased is kept at the family home for 3 to 5 days to enable friends and family to gather and pay their respects to the deceased and their family. Families unable to carry out this practice forgo not only their own opportunity to say good-bye to their loved one, but the opportunity for their community, friends and family to do so.

1000. The body, bones or ashes of the deceased are traditionally held in a safe place after death to enable the deceased's spirit to be at peace. As families feel a responsibility to put their loved one to rest, being unable to do so causes the families of the deceased to worry about the peace of their loved one's spirit. Family members feel guilty for not being able to carry out their responsibility.

1001. In addition to any religious beliefs about life after death, most South Koreans and Japanese, and to a certain extent DPRK nationals, believe that their loved ones visit them on the anniversary of their death to reunite with the family. In preparation for this event, known as *Jaesa* in Korean, the family prepare food the deceased favoured during their life, and offer it to their spirit. Families who do not know their family member's date of death are unable to carry out this important practice on the correct date of death, and therefore miss the opportunity to reunite with their loved one's spirit each year. The Korean calendar makes allowances for this practice by nominating 9 September on Lunar Calendar as *Jung-jang-jeol* (重陽節- the day of the dead) on which people who do not know the date of their loved one's death carry out *Jaesa*. However, the practice of *Jaesa* on *Jung-jang-jeol* is not widely known and family members have a strong preference to carry out *Jaesa* on the correct date of death.

1002. Individual efforts to locate and repatriate the remains of other forcibly disappeared persons have resulted in the repatriation of remains of six POWs to the ROK. The repatriation of remains has been a significant and positive step for the family members of the disappeared, enabling them to fulfil cultural practices which guide the grieving process.

(c) **Gendered impact of enforced disappearances**

1003. The Commission recognizes that women and girls, men and boys have been the victims of enforced disappearance by the DPRK and suffered harm as a result of being relatives of someone who has been disappeared. The Commission further acknowledges that women, girls, men and boys suffer differently from these harms due to gender roles, tradition and culture.

1004. The wartime abductions, denial of repatriation of POWs and the post-war abduction of fishers have involved a disproportionate number of men from the ROK. The disappearance of between 100,000 and 170,000 men had an enormous impact on the lives of women, girls and boys in a culture in which gender roles are deeply embedded in history and tradition, at a time when those roles were more pronounced than they are today. Many women suddenly found themselves to be the head of households. Without the support of a main income earner in the family, they had to shoulder the entire burden of family life themselves, at a time when relatives of the disappeared were under surveillance and treated with great suspicion.

[1523] Tokyo Public Hearing, 29 August 2013, morning (02:34:43).

1005. At the Seoul Public Hearing, the Commission heard from relatives of the disappeared about the extreme hardship they faced when a husband and father was disappeared. Mr Nam Jang-ho, the son of a fisher taken at sea and disappeared, told the Commission:

> *"I think my mom did everything she could. She held different jobs. And our siblings did not get enough education. We were only able to graduate from elementary school. I didn't even get to graduate from elementary school because things were so bad at home. Since there was no father at home, my mom used to steal sweet potatoes and potatoes from the fields of other people to feed us. And I wanted to lessen her burden. And that is why I left home. I thought that would be better for her. It was difficult for us, the children, but I think it was even more difficult for my mom."*[1524]

1006. The Commission also notes that the post-war abduction of women on the basis that they are women is an act of gender-based violence. In this regard, the Commission notes the specific instructions provided to Ms Yao Megumi to find and abduct a Japanese female in Europe to be the wife of Japanese abductee, the abduction of seven foreign women to be "given" as wives to the US army defectors,[1525] and the two women taken from Macao who are believed to have become victims of sexual exploitation in the DPRK. The Commission emphasizes its concern that these women together with the other women who have been forcibly disappeared by the DPRK were/ are disproportionately at risk of sexual violence.

(d) Discrimination against children

(i) *Abducted children*

1007. The enforced disappearance of a child is not only a violation of many rights afforded by the Declaration on the Protection of All Persons from Enforced Disappearance, but is also an extreme form of violence against children.[1526] The Commission notes that many of the abductees were under the age of 18 at the time of their abductions. These include:

- Thousands of the Korean War abductees were children at the time of their abduction.[1527]
- Mr Kim In-cheol who was a high school student when abducted from the fishing boat Deoksu 2-ho in 1968.
- Five ROK high-school students taken from beaches in the ROK in the summers of 1977 and 1978.
- Ms Yokota Megumi, abducted from Japan at age 13 on 15 November 1977.

[1524] Seoul Public Hearing, 23 August 2013, morning (03:05:00).

[1525] The four Lebanese women, Ms Anocha Panjoy, Ms Dona Bumbea and Ms Soga Hitomi.

[1526] See United Nations study on violence against children (A/61/299, 29 August 2006).

[1527] Submission to the Commission: KWAFU.

1008. These children have not only been denied the right not to be disappeared, but also the right to family life, the right to not to be separated from their parents,[1528] and the right to be cared for by their parents.[1529] The Commission is also concerned that these children will have been denied other fundamentals rights in the DPRK such as those relating to the freedom of expression,[1530] freedom of thought, belief and religion[1531] and right to privacy.[1532] Parents of these children have also been denied the right to family, and the right to guide their children.[1533]

(ii) *Children left behind*

1009. The Commission recognizes that the children of persons who have been disappeared by the DPRK have been denied the right to found and maintain a family and the right not to be separated from their parents.[1534] Several witnesses testified before the Commission about being separated from a parent at a young age, and missing them constantly.

- Mr Hwang In-chul, son of Korean airline hijacking abductee Mr Hwang Won, told the Commission:

> *"I was two, and my sister was only 100 days old. So my mother had to raise us all on her own. I repeatedly asked my mother whereabouts about my father. I had no memory of my father, but I remember he loved me very much, and I missed him. So the memory is very clear. I have very clear memory of my father. I asked my mother, and every time I asked my mother about the whereabouts of my father, she said that he was on a business trip in the United States and that was her answer and I kept asking her and kept waiting for my father. When I was on the third grade in the elementary school, my uncle, the younger brother of my father, told me that my father had been abducted when he got on that plane and ever since I have missed my father so much until this day."*[1535]

1010. Several witnesses also told the Commission of their yearning to know whether their parent is alive or not, and to have the bodies of their parents presumed to be dead because of their age, returned to them.[1536]

3. Principal findings of the commission

1011. The Commission finds that, from 1950 until the present, the DPRK has engaged in the systematic abduction, denial of repatriation and subsequent enforced disappearance of persons from other countries on a large scale and as a matter of State policy. Well over 200,000 persons who were taken from other countries to the DPRK may have potentially become victims of enforced disappearance, as defined in the Declaration for the Protection of All Persons from Enforced Disappearance. More information would have to emerge from the DPRK to provide a more reliable estimate on the number of victims.

[1528] Convention on the Rights of the Child (CRC), article 9.

[1529] CRC, article 7.

[1530] CRC, article 13.

[1531] CRC, article 14.

[1532] CRC, article 16. See section I.A for further information about violations of children's rights in the DPRK.

[1533] CRC, article 5.

[1534] CRC, article 9.

[1535] Seoul Public Hearing, 23 August 2013, morning (03:35:00).

[1536] See for example the testimonies of Mr Nam Jang-ho and Mr Choi Sung-yong, Seoul Public Hearing, 23 August 2013, morning.

1012. For a nation state which seeks to live alongside other nation states, to act in this way for such a long time, in defiance of the sovereignty of other states and the rights of foreign nationals guaranteed under international law, is exceptional.

1013. The vast majority of abductions and enforced disappearances occurred during or are otherwise linked to the Korean War and the organized movement of ethnic Koreans from Japan that started in 1959. However, hundreds of nationals of the ROK, Japan and other states were also abducted and disappeared between the 1960s and 1980s. In more recent years, the DPRK abducted a number of DPRK and ROK nationals from the People's Republic of China.

1014. The DPRK used its land, naval and intelligence forces to conduct abductions and arrests. Both Korean War and post-war operations were approved at the level of the Supreme Leader. The vast majority of victims were forcibly disappeared to gain labour and other skills for the DPRK. Some victims from the Republic of Korea and Japan were used to further espionage and terrorist activities. The DPRK often targeted non-Korean women because they are women, an act of gender-based violence. Women abducted from Europe, the Middle East and Asia were subjected to forced marriages with men from other countries to prevent liaisons on their part with ethnic Korean women that could result in inter-racial children. Some of the women have also been subject to sexual exploitation.

1015. Some of the forcibly disappeared initially travelled to the DPRK voluntarily. Others were abducted through physical force or fraudulent persuasion. Subsequently, they were all denied the right to leave the DPRK. They have been subject to severe deprivation of their liberty and freedom of movement within the DPRK, denied the right to recognition as a person before the law, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment. All of the forcibly disappeared have been placed under strict surveillance. They have been denied education and employment opportunities.

1016. Ethnic Koreans from the Republic of Korea and Japan forcibly disappeared by the Democratic People's Republic of Korea have been discriminated against for their origins and background. They were categorized as "hostile" and forced to work in mines and farms of remote marginalized areas. It is anticipated many of them were likely to have been the first victims of the famine in the 1990s because of their lower social status. Being forced to live in remote areas with limited resources has also resulted in the forcibly disappeared having limited access to medical facilities.

1017. Non-Korean abductees were not able to integrate into social and economic life in the DPRK as they were detained in tightly controlled compounds. They were denied the right to work, precluded from leaving their residence and moving freely in society, and unable to choose education opportunities for themselves and their children.

1018. Many of the forcibly disappeared were under the age of 18 at the time of their abduction or arrest. These children have not only been denied the right not to be disappeared, but also the right to family life, the right to not to be separated from their parents, and the right to be cared for by their parents.

1019. Family members abroad and foreign states wishing to exercise their right to diplomatic protection have been consistently denied requested information establishing the fate and whereabouts of the victims. Family members of the disappeared have been subjected to torture and other cruel, inhuman or degrading treatment. They have been denied the right to an effective remedy for human rights violations, including the right to the truth. Parents of disappeared children have been denied the right to family and the right to guide their children. Children of persons who have been disappeared by the DPRK have been denied the right to found and maintain a family and the right not to be separated from their parents.

1020. Despite admitting to the abduction of 13 Japanese nationals by agents of the state, the DPRK has never disavowed the practice of international abductions. Since the 1990s, its agents have abducted a number of citizens and nationals from Chinese territory including nationals of the People's Republic of China and the Republic of Korea, and in at least one case a former Japanese national.

1021. The Commission finds that almost all the foregoing victims remain disappeared and human rights violations continue against them and their families.

V. Crimes against humanity

1022. Resolution 22/13 requires the Commission to carry out its inquiry "with a view to ensuring full accountability, in particular where these violations may amount to crimes against humanity". Paragraph 31 of the Special Rapporteur's report, to which Resolution 22/13 refers, provides that the "inquiry should examine the issues of institutional and personal accountability for [grave, systematic and widespread violations], in particular where they amount to crimes against humanity" and provide a "detailed examination and legal analysis of whether crimes against humanity are being perpetrated".[1537]

1023. The Commission has approached this element of its mandate in recognition of the fact that it is neither a judicial body nor a prosecutor. It cannot make final determinations of individual criminal responsibility. It can determine whether its findings establish reasonable grounds that crimes against humanity have been committed so as to merit a criminal investigation by a competent national or international organ of justice. Where the Commission makes findings on crimes against humanity in this sections, these findings must be understood as being on the basis of the 'reasonable grounds' standard of proof.[1538]

1024. The Commission has focused its consideration of crimes against humanity on those patterns of gross human rights violations, where the Commission's factual findings, as determined in section IV of this report, established a particularly compelling case.[1539] Accordingly, the Commission focused its analysis on six groups of victims:

1. inmates of political prison camps;
2. inmates of the ordinary prison system, in particular political prisoners among them;
3. religious believers and others considered to introduce subversive influences;
4. persons who try to flee the country;
5. starving populations; and
6. persons from other countries who became victims of international abductions and enforced disappearances.

1025. Crimes against humanity require (1) intentional inhumane acts that (2) form part of a widespread or systematic attack.[1540] With regard to each of these six victim groups, the Commission will therefore first establish what inhumane acts have been committed against them. The Commission will then address the question of why the inhumane acts committed against each of the six groups form part of systematic and widespread attacks against a civilian population. In this regard, the Commission will establish that three distinct state attacks against civilian populations are underlying crimes against humanity in the DPRK:

[1537] A/HRC/22/57.

[1538] For details on the standard of proof, see section II.E.

[1539] The Commission notes that other patterns of violations could entail crimes against humanity as well. In particular, purges undertaken to consolidate the rule of Kim Il-sung and stifle any challenges to the dynastic successions of Kim Jong-il and Kim Jong-un deserve to be closely examined with regard to crimes against humanity after access to relevant archives and more witnesses from within the state system becomes more readily available.

[1540] See section V.A.

- The State is carrying out a systematic and widespread attack against anyone who is considered to pose a threat to the political system and leadership of the PDRK. Crimes against humanity targeting inmates of political prison camps and the ordinary prison system, persons who try to flee the DPRK, religious believers and others considered to introduce subversive influences all form part of this attack.
- The State has led a systematic and widespread attack against the general population by knowingly aggravating its starvation and sacrificing the lives of large numbers of innocent, ordinary citizens in order to preserve the political system and its leadership.
- The State abducted and forcibly disappeared a large number of persons from other countries in a systematic and widespread manner in order to gain labour and skills to enhance the DPRK and strengthen it in the struggle for supremacy on the Korean peninsula.

A. Definition of crimes against humanity under international law

1026. Crimes against humanity entail gross human rights violations of a scale and level of organization that shock the conscience of humanity. First set out in the Charter of the International Military Tribunal at Nuremberg in 1945, the definition of crimes against humanity has been shaped by the body of jurisprudence emanating from the Nuremberg and Tokyo tribunals, the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court for Sierra Leone (SCSL); and national courts. The state practice emerging from the negotiations leading to the adoption of the Rome Statute of the International Criminal Court (Rome Statute) and its subsequent ratification by 122 states has further clarified and elaborated the definition of crimes against humanity. For the most part, article 7 of the Rome Statute, and the specifications in the Rome Statute's Elements of Crimes, reflect the definition of crimes against humanity under customary international law as that concept stands today.[1541]

1027. Crimes against humanity have a high legal threshold. Two elements must coincide:

(a) Individuals must commit inhumane acts with the requisite criminal intent; and

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[1541] See Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, 3rd ed. (Oxford, Oxford University Press, 2013), p. 105; Julian Fernandez and Xavier Pacreau, *Statut de Rome de la Cour Pénale Internationale* (Paris, Editions Pedone, 2012), p. 419. Where the definitions under the Rome Statute and customary international law apparently diverge from another, this has been noted. Considering that crimes against humanity could become subject to prosecution before the International Criminal court on the basis of the Rome Statute or prosecution before another international or national court that applies customary international law (see section VI.B), the commission has followed a "lowest common denominator" approach. Thus, it has applied the Rome Statute where it is narrower than customary international law and vice versa. Therefore, all crimes against humanity established by the Commission would amount to crimes under the definitions of crimes against humanity under both the Rome Statuate and customary international law.

(b) These inhumane acts must form part of a widespread or systematic attack directed against a civilian population. The Rome Statute also requires that the attack must be pursuant to, or in furtherance of, a state or organizational policy.[1542]

1. Inhumane acts

1028. The types of conduct amounting to inhumane acts largely overlap with those recognized as constituting gross human rights violations. The inhumane acts relevant for the purpose of this inquiry are:

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of a population;
- imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- torture;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- enforced disappearance of persons; and
- the "residual category" of inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[1543]

1029. The inhumane acts must be committed with criminal intent. According to the Rome Statute, such intent requires that the perpetrator acts with the objective of carrying out the inhumane act or is aware that the consequence defining the inhumane act will occur in the ordinary course of events.[1544] Gross negligence or inadvertent recklessness are not sufficient for the commission of crimes against humanity.

[1542] The policy required under the Rome Statute does not have to be incorporated in a written document or formal statement. The policy "need not be explicitly defined … an attack which is planned, directed or organized – as opposed to spontaneous or isolated acts of violence - will satisfy this [policy] criterion". See *Prosecutor v. Katanga* et al, ICC-01/04-01/07 [ICC Pre-Trial Chamber I], Decision on the Confirmation of Charges of 30 September 2008, para. 396.
It is debated whether the requirement of a State or other organizational policy also forms part of customary international law or whether the Rome Statute introduces a new requirement. Against the proposition that customary international law requires the existence of a policy: *Prosecutor v. Kunarac et al*, IT-96-23& IT-96-23/1-A [ICTY Appeals Chamber], Judgment of 12 June 2002, para. 98 [with further references in id., fn 114]. For an overview of relevant arguments see William Schabas, Unimaginable Atrocities (Oxford University Press, 2012), pp. 128 ff.; Antonio Cassese, "Crimes Against Humanity" in Antonio Cassese, Paola Gaeta, and John R.W.D. Jones, eds.,*The Rome Statute of the International Criminal Court: A Commentary* (Oxford, Oxford University Press, 2002), pp. 375-376; Guénaël Mettraux, "The Definition of Crimes Against Humanity and the Question of a "Policy" Element", in Leila Nadya Sadat, *Forging a Convention on Crimes against Humanity* (Cambridge, Cambridge University Press, 2013), pp. 143 ff. This contested question of law has no bearing on the legal findings of the Commission since it finds reasonable grounds indicating that the crimes against humanity committed in the DPRK form part of systematic attacks. The notion of a systematic attack already indicates the existence of an underlying policy.

[1543] See Rome Statute, article 7 (1). See also Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, pp. 94 ff.

2. Systematic or widespread attack

1030. The inhumane acts listed above do not amount to crimes against humanity, if they constitute isolated or sporadic events. Instead, they must form part of a larger attack against a civilian population. Such an attack "is not limited to the use of armed force and encompasses any mistreatment of a civilian population".[1545] This attack must be either widespread or systematic (in practice, it is often the case that the attack is both).

1031. An attack is widespread, if it involves "massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims."[1546]

1032. A systematic attack requires "organized action, following a regular pattern, on the basis of a common policy and involves substantial public or private resources… there must exist some form of preconceived plan or policy."[1547] Indicators that can be considered as establishing the systematic nature of an attack include that:

- the violations are in line with an underlying political objective;
- there is an ideology to destroy, persecute or weaken a community;
- high-level political and/or military authorities are implicated in the definition and establishment of a methodical plan to commit violations;
- propaganda, indoctrination or psychological oppression are used to create an environment in which crimes will occur;
- criminal acts are being perpetrated on a very large scale and follow a regular pattern making it improbable that the acts could occur randomly;
- there is a repeated and continuous commission of inhumane acts linked to one another; or
- organized efforts are made to conceal the crimes committed. [1548]

[1544] See Rome Statute, article 30. It is subject to debate whether customary international law accepts a wider ambit of criminal intent that also extends to cases where perpetrators are aware of the possible risk that their conduct will result in the consequences defining the inhumane act and accept this risk (dolus eventualis in civil law systems; advertent recklessness in common law systems). For this proposition see e.g. Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, p. 99.

[1545] *Prosecutor v. Kunarac et al.* IT-96-23& IT-96-23/1-A [ICTY Appeals Chamber], Judgment of 12 June 2002, para. 86; *Prosecutor v. Blagojevic* IT-02-60-T [ICTY Trial Chamber], Judgment of 17 January 2005, para. 543.

[1546] *Prosecutor v. Akayesu*, ICTR–96–4–T [ICTR Trial Chamber], Judgment of 2 Sept 1998, para. 580. (2 September 1998); see also *Prosecutor v. Musema*, Judgment, No. ICTR–96–13–T, para. 204. (27 January 2000); *Prosecutor v. William Sameoi Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Case No. ICC-01/09-01/11, Decision on the Confirmation of the Charges Pursuant to article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, para. 176.

[1547] *Prosecutor v. Musema*, ICTR–96–13–T [ICTR Trial Chamber], Judgment of 27 January 2000, para. 204.

[1548] See *Prosecutor v. Blaškic*, Judgment, No. IT–95–14, Judgment of 3 March 2002, para. 204; *Prosecutor v. Dordevic*, ICTY Trial Chamber, paras. 1262 – 1380; *Prosecutor v. Dario Kordic & Mario Cerkez*, IT-95-14/2-A [ICTY Appeals Chamber], Judgment of 17 December 2004, paras. 98 & 179; *Prosecutor v. Katanga*, Decision on the Confirmation of Charges, ICC-01/04-01/07 [ICTY Pre-Trial Chamber I], Decision of 30 September 2008, para. 397.

B. Crimes against humanity in political prison camps

1033. Based on the body of testimony and information received,[1549] the Commission finds that DPRK authorities have committed and are committing crimes against humanity in the political prison camps, including extermination, murder, enslavement, torture, imprisonment, rape and other grave sexual violence and persecution on political, religious and gender grounds.

1. Inhumane acts

1034. The Commission finds that the following inhumane acts have been and are still being committed:

(a) Imprisonment

1035. Imprisonment in violation of fundamental rules of international law includes detention that fails to respect the basic principles of due process.[1550] These principles are enshrined in articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). Minor failures in ensuring due process to detainees do not amount to imprisonment under international criminal law. However, the requisite level of gravity is reached when persons are detained for long periods of time without ever being brought before an independent judge or being charged, tried or duly convicted for any crime.[1551] Fundamental rules of international law are also violated where a person is detained without any valid legal basis that would be compatible with international law, including where the imprisonment resulted from the prisoner's exercise of human rights guaranteed by international law.[1552]

1036. The Commission finds that inmates of political prison camps are victims of the crime of imprisonment. Inmates are imprisoned, usually for life, in camps without ever having been brought before a judge in accordance with article 9 (3) and (4) of the ICCPR. They have never been charged, convicted or sentenced to imprisonment, following a fair and public hearing, by a competent, independent and impartial tribunal established by law as would be required by article 14 (1) of the ICCPR.

1037. In addition, inmates are generally not imprisoned for reasons that conform to international human rights law. In many cases, their only transgression was to freely express themselves on political questions, to leave their own country, to hold a religious belief, or to exercise other human rights guaranteed to them under international law. Many inmates are not accused of any personal wrongdoing. They are incarcerated based solely on the principle of guilt by family association. Some are even born prisoners.

[1549] See in particular section IV.E.3.

[1550] See also *Prosecutor v. Kordic et al*, IT-95-14/2-T [ICTY Trial chamber], Judgment of 26 February 2001, para. 302.

[1551] See *Prosecutor v. Krnojelac*, IT-97-25-A, [ICTY Trial Chamber], Judgment of 15 March 2002, para. ; Paul De Hert and others, eds., *Code of International Criminal Law and Procedure* (Uitgeverij Larcier, 2013), p. 39; Fernandez and Parcreau, *Statut de Rome de la Cour Pénale Internationale*, p. 432.

[1552] See also Robert Cryer and others, *An Introduction to International Criminal Law and Procedure*, 2nd ed. (Cambridge University Press, 2010), p. 251; Fernandez and Parcreau, Statut de Rome de la Cour Pénale Internationale, p. 432; Prosecutor v. Krnojelac, IT-97-25-T [ICTY Trial Chamber], Judgment of 15 March 2002, para. 122.

(b) Enforced disappearance

1038. International criminal law defines "enforced disappearance" as the arrest, detention or abduction of persons by or with the authorization, support or acquiescence of a state or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.[1553]

1039. Based on the information received, the Commission finds that inmates of the DPRK's political prison camps are victims of the crime of enforced disappearance. They are stripped of their citizenship rights and detained incommunicado in remote political prison camps that officially do not exist. Most inmates are imprisoned for life, without any prospect of release. The families of detainees are not informed of the fate or whereabouts of their detained family member. The DPRK authorities commonly refuse to acknowledge the imprisonment outright. In the case of the death of an inmate, the family is not notified, and they are not permitted to collect the body for burial.

1040. The camps are removed from the oversight that the Office of the Prosecutor exerts over ordinary prisons according to DPRK law. The DPRK authorities also consistently deny access to or information about the camps to United Nations human rights bodies. The authorities falsely claim that the camps and their inmates do not exist. These considerations establish that the camps have been set up in order to deprive inmates over a prolonged time period of the protection that oversight bodies, set up under national and international law, could potentially exercise.

(c) Extermination

1041. International criminal law defines extermination as the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.[1554] The crime of extermination therefore requires killing on a massive scale.[1555] This can also be carried out by imprisoning a large number of people and withholding the necessities of life so that mass deaths ensue.[1556] In determining whether the threshold of mass killing has been reached, the accumulated deaths that are linked to the same overall extermination episode may be aggregated, even if the killings are dispersed in terms of time or geography.[1557]

1042. The death of large numbers of people does not have to be the goal pursued by the perpetrators for the criminal intent requirement to be satisfied. In the opinion of the Commission, it is sufficient that the perpetrators impose living conditions in calculated awareness that such conditions will cause mass deaths in the ordinary course of events.[1558]

[1553] See Rome Statute, article 7(2)(i). The definition builds on international human rights law, but is somewhat narrower in demanding a specific intent to deprive inmates for a prolonged period of time of the protection of the law. On the recognition of conduct amounting to enforced disappearance as an inhumane act under customary international law since Nuremberg, see section V.G.

[1554] Rome Statute, article 7 (2). See also *Prosecutor v. Popovic et al*, IT-05-88-T [ICTY Trial Chamber,] Judgment of 10 June 2010, para. 800; *Prosecutor v. Munyakazi*, ICTR-97-36A-T [ICTR Trial Chamber], Judgment of 5 July 2010, para. 506.

[1555] Prosecutor *v. Ntagerura*, ICTR-99-46-T [ICTR Trial Chamber], Judgment of 25 February 2004, para. 701.

[1556] *Prosecutor v. Kayishema*, ICTR-95-1 [ICTR Trial Chamber], Judgment of 21 May 1999, para. 146.

[1557] See *Prosecutor v. Lukic*, IT-98-32/1-T [ICTY Trial Chamber], Judgment of 20 July 2009, para. 938.

[1558] Prosecutor v. Lukic, IT-98-32/1-T [ICTY Trial Chamber], Judgment of 20 July 2009, para. 939. See also M. Cherif Bassiouni, *Crimes against Humanity : Historical Evolution and Contemporary Application* (Cambridge, Cambridge University Press, 2011), p. 369; Elias Davidsson, "Economic

1043. The Commission's factual findings on the political prison camps in the DPRK[1559] match the definition of extermination. Across the various camps, the living conditions imposed on the political prisoners cause the deaths of thousands of inmates every year. Over the period of the existence of the camp system, hundreds of thousands have died.

1044. The Commission finds that the living conditions in the political prison camps are calculated to bring about mass deaths. Forced to carry out grueling labour, inmates are provided food rations that are so insufficient that many inmates starve to death. Those prisoners who survive do so by devising their own coping mechanisms, often having to resort to means, such as stealing food, that are illegal in the camp and subject to harsh punishment. The death toll is further exacerbated by executions, deaths from torture, the denial of adequate medical care, high incidence of work accidents, lack of shelter and lack of appropriate clothes.

1045. The authorities administering the political prison camps are aware that deaths on a massive scale occur in the ordinary course of events. Information provided to the Commission by former guards and inmates suggests that the camps have the objective of gradually eliminating the camp population by working many prisoners to death. As noted by former political prison camp guard Ahn Myong-chol, political prison camp inmates "*are supposed to die in the camp from hard labour*".[1560] This corresponds with the instruction, attributed to Kim Il-sung and taught to camp officials, that three generations of class enemies and factionalists must be eliminated.

(d) Murder

1046. The crime of murder under international criminal law requires unlawfully causing the death of a person.[1561] The perpetrator must either act with the subjective purpose of causing such death or serious injury or awareness that the causation of death will be the consequence of the impugned acts in the ordinary course of events.[1562]

Oppression as an International Wrong or as Crime against Humanity", *Netherlands Quarterly of Human Rights*, vol. 23, No. 2 (2005), p. 195; Antonio Cassese, "Crimes against Humanity", in Antonio Cassese, Paola Gaeta, and John R.W.D. Jones, eds., *The Rome Statute of the International Criminal Court: A Commentary*, p. 365; Albin Eser, "Mental Elements-Mistake of Fact and Mistake of Law", in Cassesse, Gaeta and Jones, eds., *The Rome Statute of the International Criminal Court*, p. 917. *Prosecutor v. Kayishema*, ICTR-95-1-T, ICTR Trial Chamber, Judgment of 21 May 1999, para. 144 even finds that recklessness or negligence are sufficient, but this appear to go beyond the accepted state of customary international law or, for that matter, the explicit wording of the Rome Statute. Some authors have argued that the fact that living conditions must be "calculated" to destroy part of the population indicates the mental requirement of a specific objective. See Christopher K. Hall, " article 7: Crimes against Humanity" in Otto Triffterer and Kai Ambos, *Commentary on the Rome Statute of the International Criminal Code* (2008), at article 7, para. 95; Evelyne Schmid, "Violations of Economic, Social and Cultural Rights in International and Transnational Criminal Law", PhD dissertation, Graduate Institute of International and Development Studies, 2012, p. 111. The term "calculated", however, can also be understood as the perpetrator making the calculated assessment that the infliction of the particular conditions of life will in the ordinary course of events result in mass killing, even though this might not by the perpetrator's subjective purpose.

[1559] See above, section IV.E.3.

[1560] Seoul Public Hearing, 21 August 2013, afternoon (00:16:40).

[1561] Elements of Crimes, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess., Sept. 3–10, 2002, article 7 (1) (a); M. Cherif Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application*, p. 365.

[1562] See Rome Statute, article 30. See also *Prosecutor v. Katanaga* ICC-01/04-01/07 [ICC Pre-Trial Chamber I], Decision on the Confirmation of Charges of 30 September 2008, para. 423. International customary law as defined by the ICTY and ICTR, also indicates that intentionally causing serious

1047. The intentional killings of individual inmates in the DPRK's political prison camps, through summary executions, beatings, infanticide, deliberate starvation and other illegal means, all amount to the crime of murder.

(e) Enslavement

1048. The exercise of any or all of the powers ordinarily attaching to the right of ownership over a person amounts to enslavement.[1563] The extraction of forced labour can amount to enslavement if it is accompanied by aggravating circumstances that effectively destroy the juridical personhood of the victim.[1564] Relevant circumstances include detention or captivity; the degree of control exercised over the victim's autonomy; freedom of choice or freedom of movement, including measures taken to prevent or deter escape; fear of violence; abuse of power; duration, conditions and intensity of forced labour; victims' vulnerability; subjection to cruel treatment and abuse; and intense control of sexuality.[1565]

1049. The Commission finds that the experience of inmates in political prison camps in the DPRK involves all of the characteristics of enslavement. Inmates are subjected to a lifetime of arduous and perilous forced labour. They are treated as if there were "*ploughing animals*", as former inmate Shin Dong Hyuk described their fate.[1566] The prisoners are often so weakened from malnourishment and disease that they are literally worked to death. Inmates have no chance of extricating themselves from this situation. Failure to perform forced labour is subject to severe punishment including summary execution, torture and ration cuts that further aggravate starvation. Escape from the high-security total control zones is almost impossible. Anyone who attempts to escape is summarily executed. Inmates are subject to the total control of the camp authorities, who regularly subject them to torture and deny their sexual and reproductive rights.

(f) Torture and subjection to extremely inhumane detention conditions

1050. The Rome Statute defines torture as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the perpetrator.[1567]

1051. The definition of torture under customary international law, as espoused by the ICTY, demands the presence of severe physical or mental pain and suffering, but without requiring custody or control. Instead, the acts in question must "aim at obtaining

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injury in reckless disregard of the risk for human life can amount to murder. See *Prosecutor v. Mucic et al*, IT-96-21-T [ICTY Trial Chamber], Judgment of 16 Nov 1998, para. 439; *Prosecutor v. Akayesu*, ICTR-96-4-T [ICTR Trial Chamber], Judgment of 2 Sept 1998, para. 589.

[1563] Rome Statute, article 7 (2) (c); *Prosecutor v. Kunarac et al*, IT-96-23/IT-96-23/1, ICTY Trial Chamber, Judgment of 22 February 2001, para. 539; *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23-A, 12 June 2002, ICTY Appeals Chamber, para. 117; *Prosecutor v Taylor*, SCSL-03-01-T, SCSL Trial Chamber, Judgment of 18 May 2012, para. 446.

[1564] See Elements of Crimes, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess., Sept. 3–10, 2002, article 7 (2) (c), footnote 10; *Prosecutor v. Kunarac et al*, IT-96-23/IT-96-23/1 [ICTY Trial Chamber], Judgment of 22 February 2001, para. 541; *Prosecutor v. Kunarac* et al, IT-96-23-A, 12 June 2002, ICTY Appeals Chamber, para. 117: *Prosecutor v. Taylor*, SCSL-03-1-T [SCSL Trial Chamber], Judgment of 26 April 2012, para. 448

[1565] See *Prosecutor v. Kunarac et al*, IT-96-23-A [ICTY Appeals Chamber], Judgment of 12 June 2002, para. 119; *Prosecutor v. Kunarac et al*, IT-96-23/IT-96-23/1 [ICTY Trial Chamber], Judgment of 22 February 2001, paras. 542 and 543; *Prosecutor v. Taylor*, SCSL-03-1-T [SCSL Trial Chamber], Judgment of 26 April 2012, para. 447.

[1566] Seoul Public Hearing, 20 August 2013, afternoon.

[1567] See Rome Statute, article 2 (e).

information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person."[1568]

1052. The Commission finds that physical torture is an established feature of the political prison camps in the DPRK, where it is widely used to punish and intimidate inmates held on discriminatory political, religious or social grounds. It is typically carried out in specially constructed punishment blocks. Guards are also authorized and instructed to impose on-the-spot punishments that inflict severe suffering in response to perceived inmate infractions.

1053. Intentionally subjecting persons to extremely inhumane conditions of detention can constitute a crime against humanity.[1569] In the case of the DPRK's political prison camps, the inhumanity of the overall situation is particularly shaped by the policy of deliberate starvation that subjects inmates to a lifetime of physical suffering and mental anguish. Since this severe suffering is inflicted on the prisoners to intimidate and punish them on political grounds, the Commission considers that the threshold of torture may be reached on the ground of their deliberate starvation alone.

(g) Rape and other forms of sexual violence

1054. It is now undisputed that crimes against humanity encompass rape.[1570] Although formally prohibited and occasionally leading to disciplinary action, rape is regularly committed in the political prison camps of the DPRK. They are a product of the environment of the prison camps and the impunity generally enjoyed by camp officials. Rape therefore forms part of the overall attack against the camp population. In some cases, female inmates are raped using physical force. In other cases, women are pressed into "consensual" sexual relations to avoid harsh labour assignments, or to receive food. Such cases may also amount to rape as defined under international law, because the perpetrators take advantage of the coercive circumstances of the camp environment and the resulting vulnerability of the female inmates. [1571]

[1568] *Prosecutor v. Kunarac et al*, IT-96-23-A, 12 June 2002, ICTY Appeals Chamber, para. 117.

[1569] See *Prosecutor v. Kaing Guek Eav (Duch). Case 001/18-07-2007/ECCC/Tc* [Extraordinary Chambers of the Courts of Cambodia, Trial Chamber], Judgment of 26 July 2010, para. 372. The court found that conditions of detention amounted to inhumane acts that included shackling and chaining, blindfolding and handcuffing when being moved outside the cells, severe beatings and corporal punishments, detention in overly small or overcrowded cells, lack of adequate food, hygiene and medical care. See also *Prosecutor v. Kvocka et al*, IT-98-30/1-T [ICTY Trial Chamber], Judgment of 2 November 2001, paras. 190 & 1991, affirmed by *Prosecutor v. Kvocka* et al, IT-98-30/1-A [ICTY Appeals Chamber], Judgment of 28 February 2005], paras. 324-325. The ICTY considered that the conditions prevailing in internment camp amounted to crimes against humanity: "gross overcrowding in small rooms without ventilation, requiring the detainees to beg for water, and forcing them to relieve bodily functions in their clothes… constant berating, demoralizing, and threatening of detainees, including the guards' coercive demands for money from detainees, and the housing of detainees in lice-infected and cramped facilities."

[1570] See also Rome Statute, article 7 (1) (g).

[1571] Taking advantage of coercive circumstances as a factor giving rise to rape has been recognized by the jurisprudence of the ICTY Appeals Chamber and the official interpretation of rape under the Rome Statute. See *Prosecutor v. Kunarac et al*, IT-96-23& IT-96-23/1-A [ICTY Appeals Chamber], 12 June 2002, para. 129 [finding that the lack of consent on the part of victim characteristic of rape also exists where the perpetrator is "taking advantage of coercive circumstances without relying on physical force"]. See also Elements of Crime, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess., Sept. 3–10, 2002, article 7(1)(g)-1, article 8(2)(b)(xxii)-1, article 8 (2) (e) (vi)-1.

1055. The imposition of forced abortions on female inmates who become pregnant without authorization not only results in immediate physically harm,it also interferes with the victim's reproductive rights and causes severe emotional suffering. Systematic or widespread forced abortions must therefore be considered a form of sexual violence of a gravity amounting to crimes against humanity.[1572]

1056. The severe pain and suffering of the incarcerated victims of rape and forced abortion, who are targeted on discriminatory political and gender grounds, regularly reach the threshold of torture as defined under the Rome Statute and customary international criminal law.[1573]

(h) Persecution

1057. International criminal law defines persecution as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.[1574] The deprivations must be committed with the specific intent of discriminating against the victim. The Rome Statute and customary international criminal law both recognize political and religious grounds among the bases of persecution as a crime against humanity.[1575]

1058. The Commission finds that inmates in the DPRK's political prison camps are generally victims of the crime of persecution. They are singled out for punishment involving arbitrary detention, enforced disappearance, torture, starvation, forced labour and other gross human rights violations on the grounds of their religious or political convictions or the socio-political background of their families. Even in the rare cases where political prisoners are released, their persecution continues upon their reintegration into general society as they and their families are restricted to the bottom rungs of the *Songbun* system.

[1572] The Nuremberg Judgment and the ICTY recognized forced abortion as a crime against humanity. See also *Judgment of the International Military Tribunal*, I The Trial of German Major War Criminals, Proceedings of the International Military Tribunal sitting at Nuremberg, Germany 2 (1946), p. 471 [considering the imposition of forced abortions on female forced labourers in coming to the conclusions that the Leadership Corps of the Nazi Party was a criminal organization implicated in crimes against humanity]. See also *Prosecutor v. Kvocka* et al, IT-98-30/1-T [ICTY Trial Chamber], Judgment of 2 November 2001, note 343; *Prosecutor v. Greifelt et al* ["The RuSHA Case"]. V Trials of War Criminals before the Nuremberg Military Tribunals, October 1946-April 1949 153 (1949) ["The RuSHA Case"] pp. 109 ff., 160-61. See also Valeria Oosterveld, "Gender-based crimes against humanity" in Leila Nadya Sadat, *Forging a Convention on Crimes against Humanity*, pp. 98-99 [noting the similarity between forced sterilization, which is a specified crime against humanity under the Rome Statute, and forced abortion].

[1573] International criminal jurisprudence has long recognized that rape can entail torture. See *Prosecutor v. Delalic* et al, IT-96-21-T [ICTY Trial Chamber], paras. 475 ff; *Prosecutor v. Furundzija*, IT-95-17/1-T [ICTY Trial Chamber], Judgment of 10 December 1998, para. 164; *Prosecutor v. Akayesu*, ICTR–96–4–T [ICTR Trial Chamber], Judgment of 2 Sept 1998, para. 687. Forced abortion as an act of torture has been recognized by successive Special Rapporteurs on Torture and other Cruel, Inhuman and Degrading Treatment. See A/HRC/22/53 (2013), para. 48; A/HRC/7/3 (2008), para. 69. See also Human Rights Committee, General Comment No. 28, CCPR/C/21/Rev.1/Add.10 (2000), para. 11.

[1574] Rome Statute, article 7(2). See also *Prosecutor v. Krnojelac*, ICTY-97-25-A [ICTY Appeals Chamber], Judgement of 17 September 2003, para. 185; *Prosecutor v. Nahimana* et al, ICTR-99-52-A [ICTR Appeals Chamber], Judgment of 28 November, para. 985.

[1575] Rome Statute, article 7(2). *Prosecutor v. Kvočka et al.*, IT-98-30/1-T [ICTY Trial Chamber], Judgement of 2 November 2001, para. 186.

1059. In the case of women, the persecution on political or social grounds intersects with gender-based persecution.[1576] Women are singled out for acts of sexual violence, including rape and forced abortion, because of their gender. In the case of forced abortions, women's capacity to reproduce is deliberately and systematically targeted in order to prevent the reproduction of so-called 'class enemies'. In the case of rape, the persecutory intent is not only rooted in the motivations of individual perpetrators. It also manifests itself in a general practice of not making serious efforts to punish the male perpetrators among the guards and other prisoners, even though their action is criminal under the DPRK Criminal Code and also breaches camp rules banning unauthorized sexual contact.

2. Systematic and widespread attack pursuant to State policy

1060. The Commission finds that the inhumane acts perpetrated in the political prison camps in the DPRK are committed on such a scale, and with such a level of organization, that they amount, in and of themselves, to a systematic and widespread attack, pursuant to State policy. Furthermore, the political prison camp system constitutes a core element of the larger systematic and widespread attack on anyone considered to be a threat to the political system or leadership of the DPRK.

1061. The political prison camps were established to achieve a central political objective, namely the elimination of three generations of factionalists and class enemies. Guards and other camp authorities are instructed that this is the objective of the camps, as determined by Kim Il-sung himself. The camps continue to serve this purpose, while also being used to purge from society, anyone else who poses a threat to the political system and its leadership. In addition, the forced labour derived from inmates in the camps' mines, farms and factories, at minimal cost, assists in the realization of politically important economic objectives, including energy generation and the provision of supplies to the security forces.

1062. The Commission finds that inhumane acts perpetrated in the DPRK's political prison camps occur on a large scale and follow a regular pattern giving rise to the inference that they form part of an overarching State policy. Across the various political prison camps in the DPRK and over a timespan of six decades, hundreds of thousands of inmates have suffered a very similar pattern of starvation, forced labour and other inhumane acts. Today, between 80,000 and 120,000 prisoners are detained in political prison camps. This represents approximately 1 in every 200 citizens of the DPRK.

1063. Guards and security agents serving in the political prison camps are taught to consider inmates to be sub-human enemies, who no longer enjoy citizen's rights. Accordingly, they are instructed to treat inmates without pity. This message is reinforced by the activities of the Propaganda Department of the Workers' Party of Korea and other state institutions, which create hostility towards so-called 'enemies of the people'. The combination of indoctrination by specific training and general propaganda creates a psychological environment that eradicates human inhibitions that might otherwise prevent guards from subjecting prisoners to such inhumane acts.

1064. The DPRK has devoted considerable resources to establishing and expanding its sprawling system of camps. The State Security Department (SSD), the country's elite security agency, is responsible for guarding inmates and administering the camps. An entire SSD bureau is assigned to this task. It is staffed by thousands of agents and guards. Roads and railroad connections have been built so that production taking place in the camps can be fully integrated into the economy. Satellite images viewed by the Commission show continued investment in expanding the camps, their security installations and infrastructure. It is impossible to believe that such a large-scale and complex institutional system could be operated without being based on a State policy approved at the highest level given the strongly centralized nature of the state in the DPRK.

[1576] The Rome Statute introduced gender-based persecution as a crime against humanity, which was not yet included in the statutes of the ICTY and ICTR. In the opinion of the Commission, this norm is crystalizing into customary international law.

1065. The Commission has received information directly indicating that the camp system is controlled from the highest level of the state. In some cases, the Commission was able to trace orders to cause the disappearance of individuals to the camps to the level of the Supreme Leader. Moreover, the State Security Department, which decides whether to send individuals to the camp, is subject to the directions and close oversight of the Supreme Leader.[1577]

1066. Despite the increasing futility of such efforts, authorities continue to devote considerable energy to concealing the existence of political prison camps and to preventing information about the crimes committed in them from reaching the international community. Precautions taken by the DPRK authorities even extend to orders from the Supreme Leader to kill all inmates in the case of war or revolution, in order to eradicate the primary evidence of the existence of the camps and the conditions prevailing therein.[1578]

1067. The Commission finds that the closest analogies, although with shorter duration and different destructive features, are the camps of totalitarian states of the twentieth century. That such political prison camps continue to exist at present in the DPRK is an affront to universally shared human rights rights values and a crime against humanity. It is the duty of the DPRK and the international community to ensure that these camps are dismantled and the surviving prisoners released without further delay.

C. Crimes against humanity in the ordinary prison system

1068. Based on the body of testimony and other information received,[1579] the Commission finds that crimes against humanity extend to the ordinary prison system, in particular the ordinary prison camps (*kyohwaso*) and, to a lesser degree, the various types of short-term forced labour detention facilities.

1. Inhumane acts committed against ordinary prisoners

1069. The Commission finds that the following inhumane acts have been, and are still being, committed:

(a) Imprisonment

1070. Ordinary prisoners in the DPRK are almost always victims of the crime of imprisonment in violation of fundamental rules of international law.

1071. Imprisonment in an ordinary prison camp (*kyohwaso*) is usually based on a judicial process. However, this is a process that falls far short of a fair and public hearing by a competent, independent and impartial tribunal established by law, as required by international law. Those incarcerated in short-term forced labour detention camps often do not receive a trial at all.

1072. Many inmates in ordinary prisons are imprisoned without substantive reason that would be compatible with international law. Often they are imprisoned is for conduct that constitutes a protected exercise of human rights and should have never been criminalized. Among them are persons who exercised their right to leave the DPRK, who practised a religion or exercised their right to freedom of information by watching foreign films or making international telephone calls.

[1577] See section VI.A.

[1578] See section IV.E.3.

[1579] See section IV.E.4.

(b) Extermination and murder

1073. In many respects, the conditions imposed on ordinary prison camp (*kyohwaso*) inmates in the DPRK are similar to those found in the political prison camps. Differences in the treatment of prisoners are often matters of degree, not principle. Policies that combine forced labour with deliberate starvation, inadequate medical care and poor hygiene conditions cause the death of thousands of inmates annually. The DPRK does not lack the capacity or resources necessary to operate a more humane penitentiary system. Most ordinary prison camps are net producers of food, but food is not given to the prisoners who remain hungry. Moreover, the output of mining and manufacturing carried out in the camps generate revenue that is apparently not used for the benefit of establishing decent conditions of detention. The Commission therefore finds that the inhumane conditions in the camps are a result of a deliberate State policy.

1074. Ordinary prison camps in the DPRK may not have the general objective of eliminating the inmates. Their legally stated purpose at least is to re-educate inmates through labour. Policies emanating from the central government to manage ordinary prisons, however, including the deliberate denial of adequate food and medical care, are being pursued despite awareness that they will cause the death of a large portion of the prison population in the ordinary course of events. This level of criminal intent is sufficient, in the view of the Commission, to establish that crimes against humanity of extermination and murder have been committed.[1580]

1075. According to the findings of the Commission, individual official acts of murder have taken place in ordinary prison camps, including summary executions of persons who attempt to escape as well as instances of secret executions.[1581]

(c) Torture, rape and other grave sexual violence

1076. Torture, as defined under international criminal law, is an established feature of the ordinary prisons in the DPRK. Torture manifests itself in the form of solitary confinement in tiny cells, the deliberate imposition of extreme levels of starvation as a disciplinary measure, and the infliction of severe beatings and other atrocities to punish inmates. The suffering resulting from the prolonged starvation, coupled with other inhumane conditions of detention, imposed on inmates to aggravate their punishment generally often also meets the threshold of torture.[1582]

1077. Although not endorsed as general policy and contrary to prison regulations, the frequent incidences of rape form part of the overall pattern of crimes against humanity. Like in the political prison camps, cases of rape are a direct consequence of the impunity and unchecked power that prison guards and other officials enjoy. The forced abortions to which pregnant inmates have been subjected constitute a form of sexual violence of a gravity that meets the threshold required for crimes against humanity.[1583]

[1580] See also section V.B.1 (c).

[1581] For details, see section IV.E 5 b).

[1582] See also section V.B.1 (f).

[1583] See also section V.B.1 (g).

(d) Enslavement

1078. Conditions of forced labour vary between different types of detention facilities. The high threshold of enslavement established by international criminal law would not be reached everywhere in the ordinary prison system of the DPRK. However, the type, duration and intensity of forced labour exacted from inmates in the ordinary prison camps (*kyohwaso*), especially in prison mines, does meet the enslavement threshold. In coming to this finding, the Commission takes into account the overall context of deliberate starvation, inhumane living conditions and harsh punishments imposed on those who fail to fulfil their work quotas or who attempt to flee. The Commission therefore firmly rejects the suggestion by the DPRK in its submission to the Human Rights Committee that conditions in the ordinary prison camps of the DPRK meet international standards.[1584]

(e) Forcible transfer of a population

1079. The crime against humanity of forcible transfer of a population is defined in international criminal law as the forced displacement of a population by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.[1585]

1080. Inmates in ordinary prisons in the DPRK are imprisoned based on the assumption of personal guilt. However, guilt by association punishment is still systematically applied to the families of ordinary prison camp (*kyohwaso*) inmates, in particular where the family resides in Pyongyang. Because of the crime of their relative, such families are considered a bad *songbun* population group. Therefore, they are systematically expelled from Pyongyang and forcibly transferred to one of the more remote provinces, where they experience much harsher socio-economic conditions.[1586] The Commission notes the large size of Ordinary Prison Camp (*kyohwaso*) No. 4 that houses thousands of inmates from Pyongyang. It therefore finds that thousands of DPRK citizens at least have been banished from Pyongyang on the basis of their family ties with convicted individuals.

1081. The DPRK's practice of collectively banishing family members who were not involved in the crime of their relative has no basis under the DPRK's formal laws and is contrary to international law. The Commission therefore considers that such banishment amounts to the crime against humanity of forcible transfer of a population.

2. Systematic and widespread attack pursuant to State policy

1082. In the DPRK, the criminal justice system and its prisons serves not merely to punish common crimes. They also form an integral part of the state's systematic and widespread attack against anyone considered a threat to the political system and its leadership. Many inmates of ordinary prisons in the DPRK are, in fact, political prisoners. The political function of the ordinary justice system, which was emphasized by Kim Il-sung and Kim Jong-il, is formally acknowledged in the DPRK present Constitution and Code of Criminal Procedure. These laws require the state and its courts to staunchly oppose and subdue class enemies.[1587] The forced labour output of the prisons, including precious ores and other goods destined for export, provide the state with important foreign currency earnings needed to sustain the political system and the elites on whose loyalty the system relies. The ordinary prison system and the way it is operated, therefore serves two central political objectives.

[1584] See section IV.E.4.

[1585] See Rome Statute, article 7 (2) (d). See also *Prosecutor v Krajisnik*, IT-00-39-A [ICTY Appeals Chamber], Judgment of 17 March 2009, paras. 304 & 305. Forcible transfer is distinguished from the crime of deportation only by the fact that victims are not moved across an international border. See *Prosecutor v Krstic*, IT-98-33-T [ICTY Trial Chamber], Judgment of 2 August 2001, para. 521.

[1586] For details, see section IV.C.1 a) (i).

[1587] See DPRK Constitution articles 8 and 162. DPRK Code of Criminal Procedure, article 2. For a more detailed discussion of the political function of the criminal justice system, see section III.5.

1083. The inhumane acts that detainees suffer within the ordinary prisons are not isolated incidents that can be traced back to individual guards or particular facilities. The Commission finds that, across the vast prison system, inhumane acts follow regular patterns that victimize tens of thousands of inmates at any point in time.

1084. Deliberate starvation and forced labour follow the same patterns in different prisons across the country, making it likely that acts are based on orders originating at the central level. Very similar types of punishment practices and torture facilities (e.g. tiny solitary confinement cells) are used across different detention installations. According to the Commission's findings, thousands of ordinary prison inmates die every year in the DPRK from starvation, exhaustion, beatings, preventable work accidents and curable diseases.[1588] The DPRK authorities, including at a central level, are aware of this, not least because starvation levels are regularly measured in prisons. However, the authorities have not taken steps to change the underlying policies. In accordance with article 30 of the DPRK Criminal Code, the civil rights of ordinary prison camp (*kyohwaso*) inmates are considered to have been partially suspended. This further encourages abuse of the inmates.

1085. Patterns of impunity also indicate that inhumane acts committed against prisoners represent official policy. Although two of the primary pillars of the criminal justice system, the Ministry of People's Security (MPS) and the Office of the Prosecutor, administer and oversee the ordinary prison system, the DPRK authorities are not making any proper efforts to end impunity for perpetrators of torture, rape, executions and other inhumane acts against prisoners.

1086. Instead, the DPRK has taken concerted steps to conceal violations in the prison system from its population and the international community. Furnaces and mass graves have been set up in or close to prison facilities to dispose of the bodies of those who die in prison to prevent family members from discovering the fate of their incarcerated relative. Where they have cooperated with United Nations human rights mechanisms, DPRK delegations have provided grossly inaccurate information about the size of the prison system and the conditions of treatment, in response to specific questions. The DPRK has also consistently denied access to prisons (except for occasional visits to certain model prisons). The repeated requests by this Commission to have access to the DPRK, including to its prison facilities, have all been ignored or rejected.

D. Crimes against humanity targeting religious believers and others considered to introduce subversive influences

1087. Based on the body of testimony and other information received,[1589] the Commission finds that persons who are considered to introduce politically or ideologically subversive influences are subject to crimes against humanity.

1088. Among the foremost victims are religious believers who practise outside the small number of state-controlled religious institutions. In the contemporary DPRK, such religious believers comprise independent communities of Christians who usually come into contact with the religion through Korean-language churches operating in the border areas of China.

[1588] See section IV.E.4.

[1589] For details, see in particular section IV.A.

1089. Others falling into the group of persons introducing subversive influences include those who have unauthorized personal or telephonic contact with people from the Republic of Korea; watch and circulate foreign films, news and entertainment programmes; or follow television programmes and radio broadcasts from abroad.

1. Inhumane acts

1090. The Commission finds that the following inhumane acts have been and are still being committed:

(a) Imprisonment and torture

1091. The authorities consider religion, movies and broadcasts emanating from countries they consider to be hostile states, and especially unauthorized contact with the ROK and its citizens, to be politically subversive. The state considers those who engage in such activities to be guilty of what the Criminal Code terms "anti-state and anti-people crimes". This is notwithstanding the fact that their conduct is within the protected sphere of international human rights law. If caught, they are imprisoned for interrogation purposes for weeks or months without being brought before a judge in violation of article 9 of the ICCPR. Thereafter, they may be sentenced to a prison facility in a trial that falls short of the requirements established by article 14 of the ICCPR. Or they may be sent to a political prison camp without trial.[1590]

1092. Severe beatings, prolonged and deliberate starvation and other acts of torture, are systematically imposed on people accused of introducing subversive elements into the DPRK. The purpose is to extract confessions and to incriminate others.

(b) Murder

1093. In cases considered particularly grave by the authorities, Christians and distributors of foreign films and materials are executed. The Commission finds that such executions amount to murder, even where they are based on a judicial sentence, because the underlying conduct is protected by international human rights law and does not qualify as one of the 'most serious crimes' to which article 6 of the ICCPR limits the application of the death penalty.[1591]

(c) Persecution

1094. Christians are also victims of persecution. The violence and heavy punishment inflicted on those who practise their religion outside the state-controlled churches are at the core of the state-sponsored discrimination that Christians experience. Their persecution is also shaped by an overall discriminatory environment where the DPRK vilifies Christianity in its propaganda and education, effectively prohibits the import and possession of religious materials, seeks to infiltrate underground churches, and subjects the few allowed to practise in state-approved churches to intense surveillance and severe restrictions on how they can practise their religion. Christians are also restricted to the bottom hostile class rungs of the

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[1590] See section V.B and V.C for the additional crimes against humanity that religious believers and others considered to have engaged in subversive behaviour experience in political prison camps and other prisons.

[1591] The abusive application of the death penalty in violation of international law can also amount to a crime against humanity, even if its imposition is technically in line with relevant national laws. See *United States of America v. Alstötter* et al. [The Nuremberg Justice Case] 3 T.W.C. 1 (1948), at 1155. In that case, the court found that a defendant incurred criminal responsibility for extermination and persecution based on death penalties he handed down.

Songbun system which adds additional layers of disadvantages to their experience of discrimination.

2. Systematic and widespread attack pursuant to State policy

1095. The Commission finds that the systematic and widespread attack of the state against populations that are considered a threat to the political system and leadership of the DPRK extends to those following religion or introducing other subversive influences. These groups are considered to pose a particular threat because their conduct challenges the monopoly on information and ideological formation asserted by the Workers' Party of Korea and its leadership. In the case of Christians, the state is also pursuing the additional political objective of preventing the reintroduction of independent Christian communities. Such communities were eradicated in past purges.

1096. State authorities commit considerable resources to enforcing their policy to ensure the arrest, capture and punishment of Christians and others considered to introduce subversive influences. As a matter of standard protocol, anyone repatriated from China is systematically screened to find Christians and other persons who had direct contact with churches and/or ROK citizens. According to the findings of the Commission, the SSD, MPS and KPA Military Security are carrying out a coordinated crackdown on the inflow of foreign movies and have set up joint inspection groups for this purpose, in accordance with orders that apparently emanate from the Supreme Leader himself. On behalf of the National Defence Commission, the highest decision-making body in the state, a proclamation has been issued demanding that the population report to the security forces anyone watching or distributing foreign films and television programmes. Customs authorities systematically search incoming goods to find foreign movies or devices capable of receiving foreign broadcasts. SSD inspection teams use sophisticated technology to detect the use of unauthorized Chinese mobile phones.

1097. DPRK authorities systematically seek to hide the persecution of Christians who practise their religion outside state-controlled churches from the international community. They do this by pointing to a small number of state-controlled Churches as the exemplification of religious freedom and pluralism within the country.

E. Crimes against humanity targeting persons who try to flee the country

1098. Based on the body of testimony and information received,[1592] the Commission finds that crimes against humanity have been and, are still being committed, against persons who try to flee the DPRK, including against persons forcibly repatriated from China.

1. Inhumane acts

1099. The Commission finds that the following inhumane acts have been and are still being committed:

(a) Imprisonment

1100. As a matter of standard protocol, the SSD and MPS systematically detianed persons who are caught trying to flee the DPRK, or who are forcibly repatriated, for interrogation purposes, often for several months. During this phase, detainees are generally not brought before a judge in accordance with article 9 (3) of the ICCPR. They also have no opportunity to challenge the lawfulness of their detention in a court, as is required by article 9 (4) of the ICCPR.

[1592] For details, see section IV.C.2.

1101. The detainees who can convince the SSD and MPS interrogators that they left the DPRK to find work or gain support from relatives living in China are punished (usually without trial) with shorter terms of imprisonment. Since they are punished for pursuing the only available way to exercise their right to leave their own country, the punishment occurs without a reason that would be compatible with international law.

1102. Those found to have practised the Christian religion or to have had contact with persons from the Republic of Korea are imprisoned, on the basis of an unfair trial or no trial at all, in ordinary or political prison camps.

(b) Torture and murder

1103. According to the findings of the Commission, officials of the State Security Department employ severe beatings, deliberate starvation and other means of torture against repatriated persons in order to identify those who have had contact with Christian churches and ROK nationals while abroad. Repatriated persons regularly die in detention as a result of beatings and starvation. In many cases, their deaths amount to murder since the perpetrators are aware that the harm they inflict is so grave that death will ensue in the ordinary course of events.

1104. Border guards remain authorized to shoot to kill persons who cross the DPRK border without permission. Such killings amount to murder. They cannot be justified as legitimate border control measures, because they serve to uphold a de facto total travel ban on ordinary citizens that violates international law. Furthermore, the intentional taking of life for purposes of preventing the unauthorized crossing of a border is grossly disproportionate. International law only allows the intentional use of lethal force, where strictly necessary to protect life from immediate threats.[1593]

(c) Rape and other forms of sexual violence

1105. According to the Commission's findings, repatriated women who become pregnant while in China are subject to forced abortion. This amounts to sexual violence of a gravity that meets the threshold of crimes against humanity. The forced abortions imposed on repatriated and detained women generally also constitute torture.[1594] In cases of infanticide, the crime of murder is being committed. The widespread occurrence of these crimes is facilitated by the climate of impunity that prevails in the interrogation detention facilities that process repatriated persons. The same climate of impunity allows rape and other acts of sexual violence to be committed by individual guards and to go unpunished. In relation to women repatriated from China, the perpetrators of forced abortion and infanticide appear to be driven by official ideology that emphasizes the importance of maintaining the purity of the Korean race at all costs. In these circumstances, they display particular hostility towards Korean women who have had sexual intercourse with Chinese men and become pregnant with what is considered an "impure" baby. For this reason, these inhumane acts also constitute persecution on racial and gender grounds.

1106. In the DPRK's interrogation detention centres, sexual humiliation is utilized as a deliberate strategy against repatriated women. Individual guards can subject them with impunity to physical and verbal sexual molestation (and, in some cases, also rape). As a matter of standard practice, repatriated women entering the interrogation detention centre have to strip fully naked in front of other prisoners and guards. While fully nude, they are forced to perform a series of squats so as to dislodge money hidden in their private parts (a practice known as "pumping"). The Commission finds that these practices, especially considering that they often committed cumulatively against the same victims, can be so degrading that they amount to sexual violence of a gravity that may constitute crimes against humanity.[1595]

[1593] See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/14/24/Add.6 (2010), para. 32.

[1594] See section V.C.1 (g).

1107. In line with established policies, women are also searched for money by female, and sometimes also male guards who insert their hands into the victim's vagina. These invasive body searches are conducted by ordinary guards using unsanitary techniques. The searches are carried out in the presence of other prisoners, and, in some cases, guards of the opposite sex. The overall circumstances, including the nude "pumping" that precedes the vaginal searches, makes the entire procedure sexually humiliating. They commonly serve the purpose of allowing the guards to steal, for personal gain, from repatriated persons any money they may have earned in China. The Commission was not told of any instances where money was taken and used as evidence in judicial proceedings. Such searches would therefore appear to be illegal under the DPRK Code of Criminal Procedure, which only allows searches for the purpose of gathering criminal evidence.[1596] They also fall short of international standards, allowing body searches only to be carried out only when and where necessary, in a humane manner and by persons with appropriate training.[1597] Those who resist are beaten into submission. International criminal law considers any unjustified coercive invasion of the genital opening with a part of the perpetrator's body to be rape.[1598] The Commission considers that the invasive vaginal cavity searches performed in the DPRK's interrogation detention centres for repatriated persons may amount to rape, considering that they are illegal under the DPRK's own laws; carried out in sexually humiliating overall circumstances; and are not justified by legitimate concern.

(d) Enforced disappearance

1108. According to the findings of the Commission, operatives acting on behalf of the State Security Department of the DPRK have abducted citizens who fled to China as well as Chinese and ROK nationals who helped them.[1599] Despite inquiries from international bodies and countries of origin, the fate of the victims has never been revealed. Such cases amount to enforced disappearance, as defined under international criminal law.[1600]

[1595] Forced nudity has been recognized as an inhumane act that can give rise to crimes against humanity also by the ICTR and ICTY. See *Prosecutor v. Akayesu*, ICTR–96–4–T [ICTR Trial Chamber], Judgment of 2 Sept 1998, paras. 688 & 697 [specifically finding that forcing victims to undress and perform exercises while fully nude in a public setting amounts to an inhumane act]. See also *Prosecutor v. Kunarac et al*, IT-96-23/IT-96-23/1 [ICTY Trial Chamber], Judgment of 22 February 2001, paras. 766-774; *Prosecutor v. Kvocka et al*, IT-98-30/1-T [ICTY Trial Chamber], Judgment of 2 November 2001, para. 190. Sexual molestation has been recognized as an inhumane act involving sexual violence by *Prosecutor v. Kvocka et al*, IT-98-30/1-T [ICTY Trial Chamber], Judgment of 2 November 2001, para. 180.

[1596] DPRK Code of Criminal Procedure, article 143.

[1597] See World Medical Association, "Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly held in Budapest, Hungary", October 1993. Available from http://www.wma.net/en/30publications/10policies/b5. See also Committee against Torture, CAT/C/HKG/CO/4, para. 10.

[1598] See Elements of Crime, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, Sept. 3–10, 2002, article 7(1)(g)-1, para. 1. See also *Prosecutor v. Furundzija*,. IT-95-17/1-T [ICTY Trial Chamber] Judgment of 10 December 1998, para. 185; *Prosecutor v. Seasay* et al, Case No. SCSL-04-15-T [SCSL Trial Chamber, Judgment of 2 March 2009, para. 145; *Prosecutor v Akeyesu* , paras. 688 and 686, where the ICTR specifically finds that thrusting a piece of wood into a woman's vagina constitutes rape.

2. Systematic and widespread attack pursuant to State policy

1109. The Commission finds that persons who flee the DPRK are targeted as part of the DPRK's systematic and widespread attack against populations considered to pose a threat to the political system and leadership of the DPRK, because the system of isolation, information control and indoctrination imposed by the DPRK stands and falls with its ability to isolate the population from contact with the outside world. Those who flee the country pose a threat because they gain contact with the outside world. They can often relay information back to people in the DPRK that challenges the orthodoxy imposed by the Workers' Party of Korea and the Supreme Leader.

1110. This political objective is also evidenced by the fact that those who try to flee the DPRK are generally considered perpetrators of anti-state and anti-people crimes. In addition, the policy of punishing escapees from the DPRK is explicitly supported by the DPRK Criminal Code, which criminalizes the unauthorized crossing of the border and makes it subject to severe prison sentences. This is despite ordinary citizens being effectively denied lawful options to exercise their right to leave the DPRK according to article 12 (2) of the ICCPR.

1111. All levels of the state bureaucracy, extending to the Supreme Leader himself, have devoted considerable attention and resources to the issue of people fleeing the DPRK since the issue became more prevalent in the 1990s. Kim Jong-il personally intervened to provide guidelines to adjust punishment levels. The emergence of Kim Jong-un in late 2009 as the apparent successor to his ailing father, has coincided with a reinforced ongoing effort to seal the border and exact harsher punishments against those who help escapees. Recently, the central level also intervened to modify (but not abolish) shoot-to-kill policies. It appears that this was done after China complained about the impact of border shootings on its territory. The fact that the SSD has pursued politically highly sensitive abductions of individuals from Chinese territory also suggests that the directions driving violations against those who fled the DPRK come from the highest levels of the state.

1112. High-level officials and state media in the DPRK also regularly brand people who successfully flee the DPRK with terms such as "traitor" or "human scum", thus creating a psychological environment facilitating and even encouraging the commission of crimes against humanity targeting persons trying to flee the DPRK.

1113. The DPRK has dedicated considerable resources to process and punish the large numbers of persons repatriated back to the DPRK. This affords further evidence to the existence of a centralized State policy. The main security agencies (SSD, MPS and KPA) are closely coordinating their efforts in order to seal the border and punish those found crossing it. The SSD has assumed the lead in the overall border control process since 2012, which indicates the political importance that the DPRK's leadership attaches to the issue. Interrogation and interim holding facilities have been expanded or, in some cases, newly established to accommodate the large number of repatriated persons.

1114. The fact that violations are large-scale and follow regular patterns also supports the Commission's finding that they must be based on State policy. Bearing in mind the large numbers of DPRK nationals who fled to China and the rigorous forced repatriation policy that China pursues, it can be estimated that tens of thousands of DPRK nationals have been repatriated. Almost all of the repatriated people are subjected to inhumane acts. The torture, sexual violence and inhumane conditions of detention that victims endure during the search and initial interrogation phase appear to be based on standard procedures. Standard protocols also seem to govern the transfer of repatriated persons between different security agencies and types of detention facilities.

[1599] For details, see section IV.F.1. g).

[1600] For a definition of enforced disappearance see section V.B.1 (b).

F. Starvation

1115. Based on the body of testimony and other information received,[1601] the Commission finds that DPRK officials have committed crimes against humanity by implementing actions, decisions and policies known to have led to mass starvation, death by starvation and serious mental and physical injury. The underlying policy derived from the highest level of the state. While a number of the features of this policy have changed since the second half of the 1990s, when mass starvation and related deaths peaked, the Commission remains concerned that some of the elements that have led to crimes against humanity are still present.

1. Inhumane acts

1116. The Commission finds that the following inhumane acts have been committed:

(a) Extermination

1117. The deprivation of access to food, calculated to bring about the destruction of part of a population, amounts to extermination.[1602] Although there is no particular numerical threshold, the notion of 'destruction of part of population' requires deaths on a massive scale.[1603]

1118. Regarding the requisite intent for the crime of extermination, the death of large numbers of people does not have to be the subjective purpose of the perpetrators. For the crime of extermination to take place, it is sufficient that the perpetrators deprive the population of necessary food in calculated awareness that these conditions will cause mass deaths in the ordinary course of events.[1604] Mere recklessness, such as decisions taken despite full knowledge of the risk that they would cause or aggravate mass starvation and deaths, would not meet the threshold of extermination as a crime against humanity.

1119. The root causes of the food shortage and mass starvation that has killed, at a minimum, hundreds of thousands of people in the DPRK, particularly in the late 1990s, lie in a series of policies dating back to the establishment of the DPRK. These policies imposed a planned economy that overly focused on heavy industry, an input-intensive collectivized agriculture system and tight control over individual livelihood choices without respecting relevant principles of participation and good governance. It is also grounded in misguided spending priorities, which maintained an oversized and unsustainable security apparatus and discriminatory patterns of food distribution that served political imperatives. These policies appear to have been adopted and maintained by the DPRK authorities in reliance on the Soviet Union, China and other socialist nations continually making up for the resulting shortfall in the DPRK's own production of food and related agricultural inputs. The violations of the right to food and other human rights intrinsic to these policies created the environment in which crimes against humanity would then unfold.

[1601] For details, see section IV.D.

[1602] Rome Statute, article 7(2). See also *Prosecutor v. Popovic* et al, IT-05-88-T [ICTY Trial Chamber], Judgment of 10 June 2010, para. 800; *Prosecutor v. Munyakazi*, ICTR-97-36A-T [ICTR Trial Chamber], Judgment of 5 July 2010, para. 506.

[1603] *Prosectuor Ntagerura et al*, ICTR-99-46-T [ICTR Trial Chamber], Judgment of 25 February 2004, para. 701; *Prosecutor v. Semanza*, ICTR-97-20-T [ICTR Trial Chamber], Judgment of 15 May 2003, para. 340; *Prosecutor v. Vasiljevic*, IT-98-32-T [ICTY Triai Chamber], Judgment of 29 November 2002, paras. 227 & 232.

[1604] See above, section V.B.1 [Extermination].

1120. Food shortages have been a recurrent theme in the history of the DPRK.[1605] From the early 1990s, coinciding with the collapse of the Soviet Union and the Eastern bloc of socialist states, severe food shortages and mass starvation existed in the DPRK already. This was implicitly acknowledged by the DPRK itself through the promulgation of the national campaign "Let's eat two meals a day" in 1991. By the end of 1993, the DPRK authorities knew that neither China, nor the South Asian countries that were approached for help, would provide the external aid necessary to prevent mass starvation and consequent mass deaths.

1121. With a famine already underway, relevant DPRK officials adopted a series of decisions and policies that violated international law and aggravated mass starvation. This greatly increased the number of people who subsequently starved to death. The archives of the DPRK may one day provide greater insights into the underlying motivations. Based on the testimony and other information available to it, the Commission could not conclude that DPRK officials acted with the subjective purpose of starving its general population or even a part thereof to death.[1606] However, according to the findings of the Commission, the authorities were fully aware that a number of decisions they took in the 1990s would greatly aggravate mass starvation and the related death toll in the ordinary course of events. They nevertheless took these decisions because they prioritized the preservation of the political system of the DPRK, the Supreme Leader and the elites surrounding him. As noted above, this level of criminal intent is sufficient for the crime of extermination.

1122. The Commission considers that deliberately providing misleading information to international humanitarian actors or preventing international food aid from reaching starving populations can constitute extermination, if mass deaths occur.[1607] The DPRK was obliged under article 11 of the International Covenant on Civil and Political Rights (IESCR) to seek and facilitate the provision international food aid when it was clear that its own resources could not ensure freedom from hunger. DPRK officials responsible for implementing this duty failed to make a concerted effort to request food aid from the international community until 1995, at which point large numbers of people were already dying. Prior to that, officials even presented misleading information, suggesting that no starvation existed in the country. The authorities did not reveal the extent of mass starvation for political reasons. Kim Jong-il himself acknowledged in a 1996 speech that starvation even extended to the army and indicated that revealing this fact would cause the DPRK to appear militarily vulnerable.[1608]

[1605] See section III.

[1606] The exception constitutes the segment of the population kept in prison camps. See sections V.B and V.C.

[1607] See Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (2011), paras: 212 and 251. Available from http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf. See also Christa Rottensteiner, "The denial of humanitarian assistance as a crime under international law", International Review of the Red Cross, 1999. Available from http://www.icrc.org/eng/resources/documents/misc/57jq32.htm; Sigrun I. Skogly, "Crimes Against Humanity – Revisited: Is there a Role for Economic and Social Rights?", *The International Journal of Human Rights*, vol. 5, No. 1 (2001), pp. 69-70.

[1608] For details, see section IV.D.3.

1123. After the DPRK finally requested international aid, officials impeded its delivery and distribution by imposing restrictions on access to populations in dire need that were not justified by legitimate humanitarian or security considerations. A number of humanitarian organizations closed down life-saving operations in response to these state restrictions. As a result of these failures, international food aid arrived later and in smaller quantities than required. This aggravated the death toll.

1124. According to the findings of the Commission, responsible DPRK officials failed to execute the obligation of the DPRK under article 11 of the ICESCR and other provisions of international law to use all the resources at its own disposal in an effort to satisfy, as a matter of priority, freedom from hunger.[1609] Instead, data suggests that the DPRK decreased its international purchases of food in 1999, as the famine was still raging. The prioritization of the military including during the famine period diverted substantial amounts of foreign currency and state budget to new military hardware including fighter jets, attack helicopters, missiles and nuclear weapons. The DPRK also did not seem to have dedicated its foreign currency earnings, which were generated from a number of legal and illegal activities that were increased since the 1990s, to necessary purchases of food. Instead, it appears that significant amounts of foreign currency, that could have had to been used to ensure freedom from hunger, was spent on the continued development of missiles and nuclear arms technology in violation of the Non-Proliferation Treaty and the maintenance of the personality cult and lifestyle of the Supreme Leader and the elites surrounding him. The immense expenditure to construct a mausoleum for Kim Il-sung was unreasonable given the prevailing conditions of mass starvation. Hunger alleviation for the general population was not prioritized over spending on the military and leadership in order to guarantee the survival of the political system of the DPRK. The Commission finds that the responsible officials adopted the relevant decisions and policies, in full awareness that they would aggravate the famine's death toll.

1125. The Commission's findings also established that responsible officials failed to execute the state's obligations under articles 2 (2) and 11 of the ICESCR to fulfil the citizens' right to freedom from hunger without discrimination on grounds of political and social origin.[1610] Responsible officials stopped the provision of food rations through the Public Distribution Systemthe in provinces of the Northeast, where populations of low *songbun* were concentrated as a result of past purges and forced population transfers. Aid organizations were denied access to the same regions in the Northeast although hundreds of thousands of people were starving there. The Commission received information that the distribution of available food was channeled, as a matter of priority, to the politically more important population of Pyongyang, cadres of the Workers' Party of Korea and the higher echelons of the security apparatus. A substantial part of the international food aid was diverted away from those most in need for the benefit of the elites. Military personnel and assets appear to have been used for this purpose, but apparently without the food benefitting the starving rank-and-file among the soldiers. The authorities were aware that this resource allocation would harm ordinary citizens. Some populations were considered expendable when weighed against the survival and support of the elites who sustained the political system and its leadership.

1126. DPRK officials upheld movement restrictions that denied the population, especially those residing in highly affected Northeastern provinces near the Chinese and Russian borders, the option of going to China or Russia to seek food in exchange for work or through assistance from relatives.[1611] Internal movement restrictions, which were not lifted,

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[1609] See section IV.D.6.

[1610] See sections IV.D.2 and IV.D.5.

[1611] See sections IV.C.2 and IV.D.4 d)

This affected populations traveling within the DPRK in search of food. The denial of available and obvious coping mechanisms constituted a violation of the right to leave one's own country (article 12(2) of the ICCPR) and the right to freedom from hunger (article 11 of the ICESCR). Stringent measures were enforced to maintain a general travel ban, including by severely punishing DPRK citizens forcibly repatriated from China. The policy of restricting movement internally and across international borders led to the starvation of countless citizens as they were deterred from going to China to work or seek help from relatives. The additional option of allowing DPRK citizens to travel to the ROK, where they could have received help based on family relations and general inter-Korean solidarity was never seriously contemplated by the DPRK. Officials were certainly aware of the disastrous impact that maintaining the travel ban had on the already starving population. They still enforced it to prevent the collapse of the political system. In a 1996 speech, Kim Jong-il himself revealed the larger political calculation, arguing that if the Workers' Party of Korea "lets the people solve the food problem themselves … the party will then lose its popular base and experience a meltdown as in Poland and Czechosolvakia."[1612]

1127. KPA officers encouraged starving soldiers to steal food from the ordinary population in order to supplement their insufficient rations.[1613] Inadequate efforts were made from the central level to address these crimes or resolve their root cause, which was the state's failure to provide its soldiers with adequate food. Officials would have been aware that effectively tolerating the theft of food by soldiers from starving civilians would inevitably aggravate starvation and related deaths among the civilian population.

(b) Murder

1128. The various decisions and policies of the DPRK leadership described above also entail crimes of murder as defined in international criminal law,[1614] because the responsible officials aggravated starvation in full awareness that this would cause more deaths in the ordinary course of events.

1129. Furthermore, large numbers of people were publicly executed for stealing food or committing other economic crimes to avoid starvation.[1615] Even when considering the situation of mass starvation, survival crimes are not among the 'most serious', to which article 6 of the ICCPR restricts the application of the death penalty. Moreover, many of these executions were carried out summarily without any trial or without trials that satisfied the fair trial guarantees that apply to the imposition of the death penalty in accordance with articles 6 and 14 of the ICCPR. For this reason, most of the public executions carried out in response to economic crimes for survival during the famine amounted to murder, as defined by international criminal law.[1616]

1130. These executions also formed part of the overall attack against starving populations. On the micro-level, they ensured that citizens would not attempt to circumvent or challenge discriminatory policies that channeled food away from them by stealing food. On the macro-level, the climate of fear created through frequent public executions was the necessary element that allowed the DPRK authorities to pursue policies that favoured the survival of the political system and its leadership at the expense of mass deaths among the general population, without triggering a total breakdown of the established order and deterring starving populations from revolting against the political system.

[1612] For the full quote of the speech see section IV.D.4 a).

[1613] For details, see section IV.D.4 c).

[1614] For the definition of murder under international criminal law, see section V.B.1 (d).

[1615] See section IV.E.5.

[1616] The abusive application of the death penalty in violation of international law can also amount to a crime against humanity, even if its imposition is technically in line with relevant national laws. See section V.D.4 (b).

(c) Other inhumane acts

1131. The Commission finds that the decisions, policies and actions described above also aggravated the starvation of the millions of affected people who did not starve to death, but still suffered great physical and mental harm. Many victims continue to be physically affected, notably those who suffered stunted growth because of chronic malnutrition during gestation and childhood. Prolonged starvation among children also leads to intergenerational harm.[1617] The Commission finds that causing or aggravating prolonged and severe starvation to large numbers of people, with the knowledge that this will result in starvation and related severe suffering in the ordinary course of events, can constitute an inhumane act of a nature amounting to a crime against humanity.

2. Systematic and widespread attacks based on State policy

1132. The Commission finds that the decisions, policies and actions that aggravated mass starvation, deaths and other suffering and physical harm resulting from it formed part of a systematic and widespread attack against the civilian population that was based on the State policy to sustain the political system and its leadership at all costs, even at the expense of aggravating starvation and sacrificing a substantial part of the general population.

1133. In coming to this conclusion, the Commission recalls that an attack against a civilian population, which gives rise to crimes against humanity, does not need to be perpetrated using armed force. It is sufficient that it encompasses the mistreatment of the population.[1618] In the case of the DPRK, this mistreatment took the form of state decisions, policies and actions, which were implemented over an extended and critical period even though it was known that they would aggravate starvation and related deaths. These decisions and policies were enforced through executions and other violent measures. This mistreatment was directed at a civilian population, as civilians were the primary victims of starvation and associated enforcement measures.

1134. The Commission finds that the attack on the ordinary population of the DPRK was not only widespread, as it affected large parts of the population. It was also systematic considering that many of the state policies known to aggravate the situation of starvation could have only been adopted at the central level of the state. Decisions such as prioritizing expenditure on new military hardware and the DPRK's leadership over food purchases; suspending food distribution first in the northeastern provinces; or allowing humanitarian access only to certain parts of the country could only be taken at the central level.

1135. The underlying objective of the State policy may not have been to starve the population. However, crimes against humanity do not require that the State policy underlying them has to be driven by a purpose of harming a civilian population. In the view of the Commission, it is sufficient that the senior officials setting the State policy are fully aware of the direct causal relationship between the State policy and the harm done. [1619] This would be the case even if the state was ultimately driven by other objectives. It is in the nature of crimes against humanity as 'state crimes' that they are often unscrupulously committed as a means by which to pursue ulterior political objectives of the state.[1620] Knowledge at the top is also a sufficient requirement to ensure that the inhumane acts committed by individual perpetrators are attributable to the state, rather than being isolated acts of individual, lower-ranking officials.

[1617] See section IV.D.1 a) (i).

[1618] *Prosecutor v. Kunarac et al*, IT-96-23& IT-96-23/1-A [ICTY Appeals Chamber], Judgment of 12 June 2002, para. 86; *Prosecutor v. Blagojevic*, IT-02-60-T [ICTY Trial Chamber], Judgment of 17 January 2005, para. 543.

[1619] The requirement of a State or other organizational policy serves to ensure that crimes against humanity are limited to crimes that are "thoroughly organized and follow a regular pattern", so as to exclude crimes that are isolated or haphazard. See also *Prosecutor v. Katanga et al*, ICC-01/04-01/07 [ICC Pre-Trial Chamber I], Decision on the Confirmation of Charges of 30 September 2008, para.

1136. In the case of the DPRK, the Commission received information that decision-makers at the central level were fully aware of the extent of mass starvation and the death toll, based on reports relayed through the highly centralized state bureaucracy. Kim Jong-il himself also carried out visits to various parts of the country, during which he would have become aware of the situation. In addition, there are reasonable grounds for concluding that decision-makers setting State policy at the central level were aware of the causal relationship between the policies they set and the aggravation of mass starvation and related deaths. Firstly, these causal relationships were obvious in light of the overall magnitude of the famine. Moreover, the relationship between state policies and starvation deaths would also have come to the attention of senior decision-makers through public statements and private communications to senior DPRK authorities by humanitarian organizations.

1137. Many of the state policies that aggravated mass starvation and related deaths giving rise to crimes against humanity continue to be in place. This is particularly true considering the continuation of discrimination against particular groups within the DPRK's population; deliberate failure to provide reliable data on the humanitarian situation and unimpeded humanitarian access to populations in need; and discriminatory spending and food distribution patterns. While significant levels of starvation and malnourishment persist in

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396. For this reason, State policies that are being set by senior decision-makers, without their full awareness and appreciation of their connection to the harm done on the ground, would not appear to provide a sufficient foundation for an attack directed against a civilian population. The Commission does therefore not agree with interpretations so extensive that they would also extend to reckless policies, as put forward e.g. by David Marcus, "Famine Crimes in International Law", *The American Journal of International Law*, vol. 97, No. 245 (2003), pp. 247 & 273; David Butler, "Enforced Starvation : Exploring Individual Criminal Responsibility for State-Induced Famines", *Human Rights Law Commentary*, vol. 3, University of Nottingham, 2007, p. 17. In this regard, Marcus, id., p. 272, also acknowledges that "the argument that a plan or policy to annihilate citizens through famine can be arrived at recklessly makes little sense".

Other authors seem to favour a more restrictive interpretation than that advanced by the Commission, according to which only policies that target civilians, i.e. aim at causing starvation could amount to crimes against humanity. See Evelyne Schmid, "Violations of Economic, Social and Cultural Rights in International and Transnational Criminal Law", p. 55. However, this interpretation would effectively introduce an element of criminal intent into the requirement of a State policy that is incongruent with and effectively narrows the established categories of criminal intent (*dolus directus* of the first and second degree) recognized under international criminal law and article 30 of the Rome Statute in particular. International Criminal Law, as also set out in the Rome Statute, demands that the attack must be pursuant to State policy. It does not require that the State policy must pursue the attack.

[1620] In the Nuremberg judgment, for instance, the policy to force non-Jewish foreign workers into slave labour was considered a central part of the attack against the civilian population in countries occupied by Nazi Germany. *Judgment of the International Military Tribunal*, The Trial of German Major War Criminals, Proceedings of the International Military Tribunal sitting at Nuremberg, Germany, Vol.1 (1946), pp. 460 ff. In coming to this conclusion, the Nuremberg judgment took into account statements of Heinrich Himmler, one of the main architects of the slave labour policy, which indicated that the objective of the policy was to boost the German war effort, but was driven by awareness and acceptance that inhumane acts were being committed in pursuing this objective. See *Judgment of the International Military Tribunal*, pp. 460 and 463.

the DPRK, the overall situation (at least as reflected in the data that has been made public) has improved. This is largely due to the informal markets that were established by the population as a coping mechanism to replace the largely defunct Public Distribution System. Other factors include considerable external aid and consecutive good harvests. However, the risk of further mass starvation and related crimes against humanity continues to exist. The Commission considers it essential that bilateral and multilateral agencies, donors and others enjoying access to relevant DPRK officials make the decision-makers in the DPRK incontestably aware of the impact of their decisions on people and their abity to their ability to enjoy universal human rights. The relevant DPRK officials should be cautioned about the individual accountability for crimes against humanity that may accrue where decision-makers knowingly adopt decisions or policies that cause or aggravate mass starvation in the population.

G. Crimes against humanity targeting persons from other countries, in particular through international abduction

1138. Based on the body of testimony and information received,[1621] the Commission finds that DPRK authorities have committed and are committing crimes against humanity against persons from other countries, namely victims of international abduction and other persons denied repatriation.

1. Inhumane acts

1139. According to the findings of the Commission, the bulk of international abductions and denials of repatriation that then gave rise to enforced disappearances occurred between 1950 and the mid-1980s.[1622] In accordance with the principle that criminal provisions must not be applied retroactively (see article 15 of the ICCPR), these acts have to be assessed based on the definition of crimes against humanity as it stood when they first occurred.

1140. Enforced disappearance was first specifically listed as an inhumane act underlying crimes against humanity in the International Law Commission's Draft Code of Crimes against the Peace and Security of Mankind of 1996.[1623] A detailed definition of the crime against humanity under international criminal law was only elaborated by article 7 (2) (i) of the Rome Statute, which was adopted in 1998. However, it has been recognized since the Nuremberg trials in the late 1940s that acts amounting to enforced disappearance under its contemporary definition constitute inhumane acts and can therefore give rise to crimes against humanity.[1624]

[1621] See in particular section IV.F.

[1622] See section IV.F.1.

[1623] See article 18(i). The Draft Code is included in the Yearbook of the International Law Commission, 1996, vol. II (Part Two), A/CN.4/Ser.A/1886/Add.1.

[1624] In Nuremberg, it was held that the practice of arresting partisans in occupied territory and deporting them to Germany, while deliberately not informing their family members about their fate, amounted to a war crime and a crime against humanity. This practice was based on the infamous "*Nacht und Nebel Erlass*" [Night and Fog Decree] issued by Adolf Hitler. In considering that the defendant Keitel had committed war crimes that also amounted to crimes against humanity, the International Military Tribunal specifically emphasized the anxiety for the families that the Night and Fog Decree meant to cause. See *Judgment of the International Military Tribunal at Nuremberg*, p. 453 read in conjunction with p. 468. See also *United States of America v. Alstötter et al.* ["The Justice Case"] 3 Law Reports on the Trial of War Criminals 1 (1948), at 1031 ff.
In support of the conclusion that enforce disappearances are not a "new" crime against humanity, but constituted a crime against humanity since Nuremberg see also Darryl Robinson, "Defining Crimes

1141. To the extent that they entail enforced disappearances, the cases of abductions and denial of repatriation that were carried out by the DPRK and its leadership from 1950 can therefore give rise to crimes against humanity. This would not constitute a retrospective application of an international criminal offense.

1142. The definition of enforced disappearance under international criminal law, which is in some respects more stringent than that under international human rights law, entails three elements:

- the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a state or a political organization,
- followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, and
- the intention of removing them from the protection of the law for a prolonged period of time.[1625]

1143. The Commission finds that a large number of inhumane acts fitting the foregoing definition have been committed by the DPRK's authorities. Approximately 80,000 civilians were abducted by DPRK forces during the Korean War. Tens of thousands of prisoners of war were retained in detention when they should have been released and repatriated.[1626] Many of them were later forced to work in coal mines in situations resembling detention. Starting in 1959, more than 93,000 persons were lured by false promises to migrate from Japan to the DPRK. A few years after their arrival, they were denied to have any contact with the family members they left behind. Many of them, ended up in political prison camps and other places of detention in the DPRK.[1627] Among them were also several thousand Japanese nationals who had been expressly promised the right to leave the DPRK.

1144. Since the end of the Korean War, DPRK naval forces have arrested hundreds of fishers of ROK nationality at sea, who were subsequently not allowed to return home.[1628]

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against Humanity at the Rome Conference", *The American Journal of International Law*, vol. 93, No. 1 (January 1999), p. 58 [n.76]; Robert Cryer and others, *An Introduction to International Criminal Law and Procedure*, pp. 262-263.

When first addressing enforced disappearances, the General Assembly also clarified that the systematic practice of enforced disappearances was of a nature of a crime against humanity. See General Assembly, Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, preamble. The ICTY also recognized enforced disappearances as inhumane acts giving rise to crimes against humanity, even though they were not explicitly listed in its statute. See *Prosecutor v Kupreskic*, IT-95-16-T [ICTY Trial Chamber], Judgment of 14 January 2000, para. 566; *Prosecutor v. Kvocka et al*, IT-98-30/1-T [ICTY Trial Chamber], Judgment of 2 November 2001, para. 208. The Commission notes that some authors consider that the Rome Statute has not codified pre-existing customary law, albeit without apparently considering the Nuremberg precedents noted above. See e.g. Antonio Cassese and Paola Gaeta, *Cassese's International Criminal Law*, p. 98.

[1625] See article 7(2)(i) Rome Statute.

[1626] Article 118, first paragraph, of the 1949 Geneva Convention III, which the DPRK has ratified, provides: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities". Building on state practice harkening back to the Hague Regulations of 1899 and 1907, this obligation also forms part of Customary International Humanitarian Law. See International Committee of the Red Cross, *Customary International Humanitarian Law* vol. 1 (2005), p. 451 [Rule 128].

[1627] During their imprisonment, they also suffered the crimes against humanity detailed in sections V.B and V.C.

[1628] An enforced disappearance can also result from an initially legal arrest. See Working Group on Enforced and Involuntary Disappearances, *General Comment on the Definition of Enforced Disappearance*, para. 7, contained in: A/HRC/7/2; Julian Fernandez & Xavier Pacreau, *Statut de*

Well over one hundred citizens of Japan, ROK and other states were abducted in planned covert actions by special operations and intelligence agents of the DPRK, who used force and fraudulent persuasion to bring the victim under their control. Many of the victims were subsequently detained in "guest houses" controlled by the DPRK intelligence services. Among the abductees were also a number of women from Europe, the Middle East and other parts of Asia who were abducted in order to be given as wives to foreigners already present in the DPRK. According to the findings of the Commission, the total number of potential victims who were brought to the DPRK between 1950 and the late 1980s could be over 200,000 persons.

1145. Eighty prisoners of war and nine fishers of ROK nationality managed to escape from the DPRK and return home. Film director Shin Sang-ok and actress Choi Un-hee from the ROK and two Lebanese abduction victims also managed to escape. Since the end of the Korean War, the mortal remains of only six prisoners of war have been handed over to the ROK. Five Japanese victims of abduction and one Lebanese woman were repatriated. The DPRK acknowledged the abduction of an additional eight Japanese citizens, but failed to provide adequate and accurate information on their fate and whereabouts. In all other cases, the DPRK refused altogether to acknowledge the deprivation of freedom and hence also failed to give information on the fate and whereabouts of the disappeared persons. This stance was adopted, despite numerous requests for information conveyed by states, international organizations and family members.

1146. The Commission further finds that the responsible authorities acted with the intent to deprive their victims of the protection of the law for a prolonged period of time. The refusal to acknowledge the deprivation of freedom effectively serves to deny the victims any opportunity to benefit from the protection that their home countries are entitled to extend under international law.[1629] It also denies them the protection that can be extended by United Nations human rights mechanisms in line with their mandates under international law. Moreover, the fact that the DPRK officially denied their deprivation of freedom also makes it futile for the victims to seek the protection of the DPRK justice system, considering the lack of independence and impartiality of the judiciary in the DPRK.

1147. In coming to the finding that the cases of abductions, denial of repatriation and subsequent enforced disappearances amount to intentional inhumane acts, which can constitute to crimes against humanity, the Commission also takes into account the severe emotional agony families in the ROK, Japan and other countries have experienced for decades. The DPRK officials responsible were and are fully aware of this agony, having been repeatedly approached by desperate relatives. The current and previous Supreme Leaders of the DPRK could not have remained oblivious to the desperate public appeals that victims' relatives conveyed through international media and also in the public hearings of this Commission.[1630]

Rome de la Cour Pénale Internationale: Commentaire article par article (2012), p. 451. For purposes of legal analysis, it is therefore immaterial whether the fishers concerned were illegally arrested on the high seas or in ROK waters or whether they had illegally entered DPRK waters, which would allow for their temporary arrest under certain circumstances in accordance with the International Law of the Sea as it stood at the time the arrests were carried out.

[1629] Affected countries enjoy the right to extend protection to their nationals under customary international law. See *Ahmadou Sadou Diallo* (Guinea v Dem. Republic of the Congo) 582 I.C.J. (2007) [Preliminary Objections], at para. 39. See also article 36 of the Vienna Convention on Consular Relations, to which the DPRK acceded in 1984.

[1630] See in this regard, the testimonies of the families who appeared before the Commission at the Seoul Public Hearing, 23 August 2013, morning and afternoon, and at the Tokyo Public Hearing, 29 August 2013, morning and 30 August, morning and afternoon..

1148. The Commission finds that many of the victims also suffered crimes against humanity, because they were, and in many cases probably remain, subject to imprisonment or other severe deprivations of their liberty without reason or due process. Such deprivations of liberty have occurred in detention houses of the intelligence services, political prison camps, ordinary prisons and mining settlements.

2. Systematic and widespread attacks pursuant to State policy

1149. The Commission finds that the enforced disappearances of persons who came from other countries constitute a systematic and widespread attack that was pursuant to a State policy and based on political grounds.[1631] Although the enforced disappearances were carried out over the span of several decades, common elements unite them, making it appropriate to consider them as a single large-scale attack.

1150. The enforced disappearances share the same political motive, namely to gain labour and skills considered necessary to enhance the DPRK and give it the upperhand in what it has perceived as a struggle with the Republic of Korea for supremacy on the Korean peninsula.

1151. There is also indication that all international abduction activities were authorized at the highest level. That these actions must have been authorized at the highest level of the state, is also evidenced by the fact that the state varyingly used its land, naval, special operations and intelligence forces to conduct abductions and arrests. Kim Il-sung personally knew and supported the decision not to repatriate large numbers of prisoners and keep their disappearance a secret from the outside world. Regarding the post-Korean War abductions, testimonies of several officials also indicates that Kim Il-sung or his designated successor Kim Jong-il personally signed off on abduction orders. Kim Jong-il also had personal contact with abduction victims, including film director Shin Sang-ok and actress Choi Un-hee and who were used to make several DPRK propaganda movies for which Kim Jong-il was the executive producer. Victims from the ROK and Japan were used for highly sensitive espionage and terrorist activities of the DPRK, which further indicates endorsement of their abduction and disappearance by the central government.

[1631] There is some jurisprudence suggesting that up to the 1990s, crimes against humanity may have had an additional requirement, namely that the attack had to be based on national, political, ethnical, racial, or religious grounds (discriminatory ground requirement). There is weighty legal authority for and against the proposition. The discriminatory grounds requirement is mentioned in the International Law Commission's 1954 *Draft Code of Offences against the Peace and Security of Mankind*, the 1994 Statute of the ICTR and the 1993 Report of the Secretary-General leading up to the establishment of the ICTY (see S/25704, para. 48). It is also mentioned in article 5 of the Statute of the Extraordinary Chambers of the Court of Cambodia (ECCC) in light of the fact that the ECCC is considering crimes committed between 1975 and 1987. See also *KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC (Extraordinary Chambers in the Courts of Cambodia, Appeals Chamber), Judgement of 3 February 2012, paras. 105 and 106. Conversely, the discriminatory grounds requirement is not mentioned in the Statute of the ICTY. Both the ICTY and the ICTR Trial Chamber have held that it never constituted part of customary international law, but is instead based on a misreading of the Nuremberg Charter. See *Prosecutor v. Tadic*, IT-94-1-A [ICTY Appeals Chamber], Judgment of 15 July 1999, para. 297; *Prosecutor v. Akayesu* ICTR-96-4-A [ICTR Appeals Chamber], Judgment of 1 June 2001, para. 464. Discriminatory grounds are not required either under the definition of crimes against humanity under the 1996 version of the International Law Commission's *Draft Code of Crimes against the Peace and Security of Mankind*. Since the Commission finds that political grounds were underlying the attack, namely the objective of enhancing the DPRK in the struggle for supremacy over the Korean peninsula, it does not have to pronounce itself on this legal question.

1152. Finally, the DPRK authorities have pursued one common policy, carried out over several decades, of denying to the families and concerned countries that the DPRK was ever involved in any enforced disappearances of persons from other countries.[1632] This policy was invariably applied with regard to all generations of disappearance victims. The sole exception remains the acknowledgment of thirteen abductions targeting Japanese citizens, which was made during the 2002 visit of Japanese Prime Minister Koizumi to the DPRK. Strong and coordinated surveillance and control measures have been taken by the security apparatus of the DPRK to ensure that none of the other victims can escape the country and disclose information. In at least two cases reported to the Commission, victims who managed to flee to China, were then re-abducted.[1633] The stringency of these control measures is also evidenced by the fact that only 93 victims have actually managed to escape from the DPRK over six decades.

1153. DPRK authorities have also pursued a policy of providing either no information or only incomplete and inaccurate information in response to inquiries from international organizations, countries of origins and families relating to the enforced disappearances. The Commission also considers it relevant to note that the authorities have never disavowed the practice of abductions from other countries as an instrument of State policy, as evidenced by the recent abductions of DPRK citizens and foreign nationals who helped them flee from the territory of the People's Republic of China.

3. Continuous nature of the crime against humanity of enforced disappearance

1154. The cases of enforced disappearances committed against persons from other countries are not crimes from the distant past. They are continuous crimes, which will only come to an end when the fate and whereabouts of the victims has been fully disclosed.[1634] DPRK officials who partake in the continuing effort of refusing to acknowledge the deprivation of freedom and deny information on the fate and whereabouts of the victims can therefore incur responsibility for crimes against humanity even if they were not themselves involved in the original arrest, abduction or detention.[1635] The Commission is conscious of the fact that many of the victims of those cases that commenced more than half a century ago, in particular the Korean War era cases, may have died of natural or other causes. From a legal point of view, however, this is immaterial and does not change the ongoing nature of the crime. It is unfortunately not unusual in cases of enforced disappearance that one finds, by the time the criminal acts are eventually fully revealed, that the victim has long since died. If the disappeared person has indeed died, the authorities can end the ongoing crime by doing their best to elucidate the circumstances of the disappearance, and to repatriate the physical remains to the family so that the victims' families can achieve emotional closure.[1636]

[1632] See section IV.F.2 a).

[1633] See section IV.F.1 g).

[1634] On the continuous nature of the crime of enforced disappearance see Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime (2010), paras. 6 and 7. Available from http://www2.ohchr.org/english/issues/disappear/docs/GC-EDCC.pdf. See also *Simón, Julio Héctor y otros s/ privación ilegítima de la libertad*, etc. Causa N°17.768C (Supreme Court of Argentina), Judgement of 13 June 2005, paras.56-57 [concurring opinion of Judge Antonio Boggiano, para. 42]. Available from http://www.unhcr.org/refworld/pdfid/4721f74c2.pdf; *Juan Contreras Sepulveda y otros (crimen)*, Corte Suprema 517/2004, Resolución 22267 (Supreme Court of Chile), Judgment of 17 November 2004), paras. 37-39. Available from http://www.derechos.org/nizkor/chile/doc/krassnoff.html; *José Carlos Trujillo Oroza*, Case No. 1190/01-R (Constitutional Court of Bolivia), Judgment of 12 November 2001. Available from http://gestor.pradpi.org/download.php?id_doc=1013; *Caso de Jésus Piedra Ibarra*, Recurso de apelación extraordinaria 01/2003 (Supreme Court of Mexico), Judgment of 5 Nov 2003. Available from: http://www.scjn.gob.mx/2010/transparencia/Documents/Transparencia/Primera per cent20sala/Novena per cent20 per centC3 per centA9poca/2003/23.doc.

[1635] See Elements of Crimes, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, Sept. 3–10, 2002, article 7(1)(i), para. 1. (b). See also Christopher K. Hall, "Article 7: Crimes against Humanity", in Otto Triffterer and Kai Ambos, *Commentary on the Rome Statute of the International Criminal Code* (2008), at article 7, para. 134.

H. A case of political genocide?

1155. According to the Commission's findings, hundreds of thousands of inmates have been exterminated in political prison camps and other places over a span of more than five decades.[1637] In conformity with the intent to eliminate class enemies and factionalists over the course of three generations, entire groups of people, including families with their children, have perished in the prison camps because of who they were and not for what they had personally done. This raises the question of whether genocide or an international crime akin to it has been committed.

1156. International law defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.[1638]

1157. In the case of the DPRK's political prison camps, extermination has been based principally on imputed political opinion and state-assigned social class. Such grounds are not included in the contemporary definition of genocide under international law.[1639] However, the notion of eliminating an entire class of people by deliberately inflicting on them conditions of life calculated to bring about their physical destruction evokes notions akin to 'genocide'. The authorities have also prevented and terminated births within the group by generally prohibiting inmates from reproducing and systematically enforcing this prohibition through forced abortions and infanticide.[1640]

[1636] See Working Group on Enforced and Involuntary Disappearances, General Comment on the Right to the Truth (A/HRC/16/48), para. 6. The Working Group further stipulates that, in accordance with international standards, the remains of the person should be clearly and indisputably identified, including through DNA analysis. State authorities should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. They must use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation.

[1637] See sections IV.E.3 f) and V.B.1.

[1638] See Convention on the Prevention and Punishment of the Crime of Genocide, article 2; Rome Statute, article 6.

[1639] In the drafting of the Rome Statute, the delegate of Cuba proposed to expand the definition to political and social groups, but this proposal found no support with other delegations. See William Schabas, *Unspeakable Atrocities*, p. 106.

[1640] See section IV.E.3 d).

1158. Such crimes might be described as a "politicide". However, in a non-technical sense, some observers would question why the conduct detailed above was not also, by analogy, genocide. The Commission is sympathetic to the possible expansion of the current understanding of genocide. However, in light of finding many instances of crimes against humanity, the Commission does not find it necessary to explore these theoretical possibilities here. The Commission emphasizes that crimes against humanity, in their own right, are crimes of such gravity that they not only trigger the responsibility of the state concerned, but demand a firm response by the international community as a whole to ensure that no further crimes are committed and the perpetrators are held accountable.

1159. In its testimony before the Commission, Christian Solidarity Worldwide submitted that there were indicators of genocide against religious groups, specifically Christians, in particular in the 1950s and 1960s.[1641] The Commission established, based on the Democratic People's Republic of Korea's own figures, that the proportion of religious adherents among the DPRK's population, who were mainly Christians, Chondoists and Buddhists, dropped from close to 24 per cent in 1950 to 0.016 per cent in 2002.[1642] The Commission also received information about purges targeting religious believers in the 1950s and 1960s. However, the Commission was not in a position to gather enough information to make a determination as to whether the authorities at the time sought to repress organized religion by extremely violent means or whether they were driven by the intent to physically annihilate the followers of particular religions as a group. This is a subject that would require thorough historical research that is difficult or impossible to undertake without access to the relevant archives of the DPRK.

I. Principal findings of the commission

1160. The Commission finds that crimes against humanity have been committed in the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the state. These crimes against humanity are on-going, because the policies, institutions and patterns of impunity that lie at their root remain in place.

1161. Persons detained in political prison camps (*kwanliso*) and other prison camps, those who try to flee the country, adherents to the Christian religion and others considered to introduce subversive influences are subjected to crimes against humanity. This occurs as part of a systematic and widespread attack of the state against anyone who is considered to pose a threat to the political system and leadership of the Democratic People's Republic of Korea. The foregoing attack is embedded in the larger patterns of politically motivated human rights violations experienced by the general population, including the discriminatory system of classification based on *songbun*.

1162. In addition, crimes against humanity have been committed against starving populations. These crimes are sourced in decisions and policies violating the universal human right to food. They were taken for purposes of sustaining the present political system, in full awareness that they would exacerbate starvation and contribute to related deaths. Many of the policies that gave rise to crimes against humanity continue to be in place, including the deliberate failure to provide reliable data on the humanitarian situation in the Democratic People's Republic of Korea, denial of free and unimpeded international humanitarian access to populations in need, and discriminatory spending and food distribution.

[1641] Testimony of Reverend Stuart Windsor on behalf of Christian Solidarity Worldwide, London Public Hearing, 23 October 2013, session 5. See also Christian Solidarity Worldwide, "North Korea: A Case To Answer, A Call To Act", p. 63.

[1642] See section IV.A.4.

1163. Finally, crimes against humanity have been, and are still being, committed against persons from the Republic of Korea, Japan and other countries who were systematically abducted or denied repatriation to gain labour and other skills for the Democratic People's Republic of Korea. These persons are victims of ongoing crimes of enforced disappearance. Officials who fail to acknowledge their deprivation of liberty or fail to provide available information about their fate and whereabouts may also incur criminal responsibility, even if they did not themselves participate in the original abduction or denial of repatriation.

1164. In the DPRK, international crimes appear to be intrinsic to the fabric of the state. The system is pitiless, pervasive and with few equivalents in modern international affairs. The fact that such enormous crimes could be going on for such a long time is an affront to universal human rights. These crimes must cease immediately. It is the duty of the DPRK and, failing that, the responsibility of the international community to ensure that this is done without delay.

1165. In the following section the Commission considers the question of who is responsible for crimes against humanity and how they can be held to account.

VI. Ensuring accountability, in particular for crimes against humanity

1166. The Human Rights Council requested the Commission to carry out its inquiry with a view to ensuring full accountability, in particular for crimes against humanity. In addition to considering issues of direct institutional and personal accountability, the Commission also reflected on the accountability of the international community in light of its accepted responsibility to protect the population of the DPRK from crimes against humanity.

A. Institutional accountability

1167. The Commission finds that the security and justice apparatus of the state as well as local and central Workers' Party of Korea institutions, which are under the effective control and guidance of the leadership organs of the Party, the National Defence Commission and the Supreme Leader, have been, and continue to be, implicated in human rights violations, including those amounting to crimes against humanity.

1168. The main security agencies, the State Security Department, the Ministry of People's Security and the Korean People's Army (KPA), are the most conspicuous institutions perpetrating gross human rights violations and related crimes against humanity, including summary executions and other extrajudicial killings, enforced disappearances, torture, prolonged arbitrary detention, rape and sexual violence of comparable gravity. Local and central institutions of the Workers' Party of Korea, the Office of the Prosecutor and the judiciary are also highly involved in carrying out human rights violations.

1. State Security Department

1169. The State Security Department (SSD) is implicated in virtually all of the systematic and widespread gross human rights violations that also constitute crimes against humanity. Established in 1972, it has tens of thousands of full-time agents, in addition to a huge network of informants placed in all institutions and segments of society.[1643] It is divided into different bureaux with overlapping responsibilities. The State Security Department is formally placed under the National Defence Commission, although information received from former officials and analysts suggests that it maintains direct reporting lines to the Supreme Leader.[1644]

1170. As also stipulated by the DPRK Code of Criminal Procedure, the SSD is the designated lead agency with power to deal with the most serious political crimes, which are officially termed "anti-state and anti-people crimes".[1645] As such, it takes the lead in identifying and suppressing political dissent, the inflow of "subversive" information from abroad, the independent exercise of the Christian religion or any other conduct which is considered a particularly serious threat to the political system and its leadership. The SSD is deeply implicated in the gross human rights violations and crimes against humanity perpetrated against people who flee the DPRK, both to escape direct persecution or to save themselves and their families from starvation that is itself rooted in human rights violations. Torture, deliberate starvation, sexual violence and inhumane treatment is systematically applied in its interrogation detention centres, in particular in the interrogation centres that initially receive persons forcibly repatriated by China. The SSD administers the political prison camps and makes decisions, in accordance with superior orders, on who will disappear to a political prison camp. Departments of the SSD are responsible for the comprehensive surveillance of communications and the enforcement of the prohibition to receive television and radio broadcasts from abroad or to use foreign mobile phones. Since the 1990s at least, SSD agents have engaged in abductions in China and subjected to enforced disappearance DPRK nationals, citizens of the ROK and China and, in at least one case, a former Japanese citizen.

2. Ministry of People's Security

1171. The Ministry of People's Security (MPS) is responsible for internal security, social control, and basic police functions. It also has responsibility to quell riots. The MPS operates police stations in every hamlet/city quarter and larger interrogation detention centres at the city, county, provincial and national level. It is estimated that the Ministry of People's Security has more than 200,000 full-time personnel.[1646] The MPS Prison Bureau administers the ordinary prison camps and short-term labour detention centres, where the Commission finds that gross human rights violations entailing crimes against humanity are being committed. Until 2006, the MPS also administered some of the political prison camps.

1172. The MPS is in charge of further interrogating and then punishing those who illegally flee the DPRK solely in order to find food or work in China. Based on administrative decisions made by MPS agents, such persons are punished in MPS-run labour training camps, where they experience deliberate starvation and other inhumane treatment. The

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[1643] TBG031, a former SSD agents, placed the figure of SSD agents at 100,000, but only 6,000-8,000 could take decisions. Other observers have indicated that the SSD has 30,000 or more than 50,000 agents; Robert L. Worden ed., *North Korea: A Country Study*, p. 277; Ken E. Gause, "Coercion, Control, Surveillance and Punishment", p. 17; Based on testimony from former SSD officials, one analyst estimates that the SSD may retain 250,000-300,000 paid informers. See Andrei Lankov, *The Real North Korea*, p. 49. TLC041, a former SSD official, indicated that he had 35 informers to keep track of a population of 2,600 citizens. Extrapolated to an entire population, this would mean that more than one in every 100 DPRK citizens is an SSD informer.

[1644] TAP024, TJH015, TLC041, ECC002.

[1645] See DPRK Code of Criminal Procedure, article 124.

[1646] Ken E. Gause, "Coercion, Control, Surveillance and Punishment", p. 27.

MPS maintains the resident registration file system, which secretly records personal and family information and thereby provides the basis for discrimination anchored to *songbun* (state-assigned social class). MPS agents are also responsible for enforcing movement and residence restrictions within the DPRK and implementing banishment orders.

3. Office of the Prosecutor and the court system

1173. The Office of the Prosecutor and the court system have important functions in legitimizing human rights violations. The Commission finds that they are used to prosecute and punish persons for political wrongdoing in a legal process involving fundamentally unfair trials. The Special Military Court, which forms part of the State Security Department, deals with the most high-profile cases of political crimes and has handed down death sentences after unfair trials.

1174. The Office of the Prosecutor also carries institutional responsibility for violations in ordinary prisons and interrogation detention centres, because it systematically fails to discharge its obligations under DPRK law to effectively oversee and enforce the limited protections and rights that pre-trial detainees and convicted prisoners enjoy even under DPRK statutes.

4. Korean People's Army

1175. The Korean People's Army (KPA) is implicated in gross human rights violations and related crimes against humanity. This applies in particular to its Military Security Command, which serves as the political police within the army. The Military Security Command also gets involved in responding to political wrongdoing not directly related to KPA personnel. The KPA Border Security Command has been a key actor in violently denying people their basic human right to leave the DPRK, although the lead on border control was transferred from the KPA to the SSD in 2012. KPA units have been involved in violations of the right to food and related crimes against humanity, including through the diversion of humanitarian aid for the benefit of senior officials and the looting of food from the general population, which was tolerated by the officer corps.

1176. The KPA abducted civilians during the Korean War and also denied repatriation to prisoners of war, illegally using them for purposes of forced labour in "construction brigades" after the conclusion of the Korean War. KPA naval and special operations units were involved in the post-Korean War enforced disappearances of nationals from the ROK and Japan.

5. Workers' Party of Korea

1177. Departments and units of the Workers' Party of Korea at the local and central level are directly involved in human rights violations, in particular violations of the rights to freedom of expression and association, and the right to food. Through its extensive indoctrination programme, carried out through its Propaganda and Agitation Department, the Party seeks to deny its citizen freedom of thought and freedom of information. The Party is also in charge of the mass organizations, indoctrination programmes aimed at children and students, and the daily indoctrination and self-criticism sessions, in which every citizen must participate. The intrusive system of Neighborhood Watches (*Inminban*) is administered by local People's Committees, which are under the control of the Workers' Party of Korea.

1178. Local and provincial People's Committees run by the Party have implemented the discriminatory distribution of food under the Public Distribution System, based on directives and policies set by central organs of the Workers' Party of Korea and relevant Ministries. Specialized central-level intelligence departments of the Workers' Party of

Korea were implicated in the covert abduction operations through which nationals of Japan, the Republic of Korea and other states were forcibly disappeared.

6. Centralized organization of human rights violations and crimes against humanity

1179. The fact that the entire security and justice apparatus and institutions of the Workers' Party of Korea at all levels are implicated in human rights violations and crimes against humanity, indicates that these institutions do not act autonomously, but subject to decisions and superior orders originating at the highest levels of the central government. This is the only conclusion that can explain the high degree of coordination between the various state institutions that commit human rights violations, which the Commission has observed on the basis of entire body of testimony and information received.

1180. The Commissions also finds that the inner workings of the state and relevant chains of command are deliberately and systematically obfuscated, especially in those areas where the state engages in the most egregious human rights violations. Orders to commit human rights violations are often only transmitted orally. Where they are put in writing, relevant documents are only available to selected officials and protected by special safeguards to preclude their divulgence to outsiders.[1647] These institutionalized precautionary measures further indicate knowledge and approval of human rights violations at the central level.

1181. Having been denied access to the DPRK and contact with its officials, the Commission experienced considerable difficulty in reconstructing how decisions are made at the central level and through which chains of command they are passed down to the implementing agents. The mandates of central decision-making structures are typically diffuse and overlapping, with the apparent aim to promote institutional rivalry among them and prevent any of them from becoming a threat to the Supreme Leader. Furthermore, the most influential individuals in the DPRK hold multiple capacities in the central organs of the Workers' Party of Korea, the military and security apparatus and other formal state institutions, making it difficult to indicate with certainty which institutions (as opposed to individuals) dominate the process leading to particular decisions. Purges of powerful individuals and the ascendance of others frequently lead to profound factual changes in the institutional landscape that are not formalized or made public.

1182. The Commission could nevertheless reach a comfortable conclusion on the basic course of decision-making. In coming to this conclusion it analysed the DPRK Constitution, the Charter of the Workers' Party of Korea as well as information provided by former officials and experts on the political system of the DPRK.

1183. The Commission finds that the decision-making process in the DPRK, is highly centralized, in particular regarding those areas where gross human rights violations and crimes against humanity are being committed. It is dominated by the Supreme Leader and a small group of people, who lead the central organs of the Workers' Party of Korea and the National Defence Commission. Many of these individuals hold high military rank and occupy key positions in the military and security apparatus. Some of them are relatives of the Supreme Leader. The relative power of the leadership organs of the Workers' Party of Korea and the National Defence Commission in comparison to one another is difficult to determine and appears to have shifted back and forth over time.[1648] However, the predominant role of the Supreme Leader, who heads both the Party and the National Defence Commission, has always remained a fixture in the political system of the DPRK.

[1647] Former DPRK officials told the Commission that documents considered sensitive were handled by special documents safekeeping departments and officials could only gain access to numbered copies that they had to hand back. Other officials indicated that written information revealing human rights violations and other sensitive conduct was systematically destroyed.

[1648] Underlying this are shifts of power between individuals who either have their power base primarily in the Party or in the military. Observers generally note that under Kim Il-sung, the Party was

1184. The Supreme People's Assembly, although nominally the highest institution in the state, serves primarily as a means of legitimizing decisions already taken by the aforementioned institutions.[1649] The Prime Minister's Cabinet has limited power in shaping economic and social policies, but is effectively replaced by the National Defence Commission in all matters considered to be related to security.

7. Leadership organs of the Workers' Party of Korea

1185. Article 11 of the DPRK Constitution establishes the supremacy of the Workers' Party of Korea: "The Democratic People's Republic of Korea shall conduct all activities under the leadership of the Workers' Party". In order to implement its supremacy in practice, the Party has strategically permeated all areas and levels of governance and society to ensure that its policies are implemented. Decision-makers in the military, security apparatus, justice system administration and state companies are generally selected from among Party cadres. The entire population is grouped in compulsory mass organizations of the Party and subject to its indoctrination and propaganda activities. Furthermore, representatives of the Party are formally placed in strategic oversight positions within state institutions; in particular in the security and justice apparatus. The Party also dominates the People's Committees at the local and provincial level and uses them to implement its policies and directives.

1186. Although the Party reaches down to the grassroots of society, it is centrally controlled by the Supreme Leader. This finds its expression in the Charter of the Workers' Party of Korea, which emphasizes the importance of preserving the solitary leadership of the Party. The Charter obligates all party members to defend resolutely the Supreme Leader (*Suryong*) and the solitary leadership system.[1650] In his 2014 New Year's Address, Kim Jong-un stressed the imperative of maintaining the monolithic leadership of the Party.[1651]

1187. Decision-making power within the Workers' Party of Korea rests with the General Secretary, the Standing Committee of the Central Committee's Political Bureau and certain departments of the Central Committee that enjoy the confidence of the Supreme Leader.[1652]

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predominant, whereas there was a shift of power towards individuals with their power base in the military under Kim Jong-il. The pendulum may have shifted back to the Party to some degree during the initial stages of Kim Jong-un's rule. However, the wider repercussions of the purge of Jang Song-thaek remain to be understood and could indicate a shift of power back to figures from the military.

[1649] The Supreme People's Assembly is controlled through a small Presidium of high-ranking Workers' Party of Korea cadres. According to article 92 of the DPRK Constitution, the Presidium convenes the Supreme People's Assembly once or twice a year. Mr Kim Yong-nam, the current chairperson of that Presidium, is one of the members of the Standing Committee of the Political Bureau of the Central Committee of the Workers' Party of Korea. The Presidium has the power to adopt its own legislative decrees. The 2007 "Annex to the Criminal Code" Decree, which introduced a number of new criminal offenses that are subject to the death penalty (see section IV.D.5), was adopted by the Presidium in this manner.

[1650] See Charter of the Workers' Party of Korea, as revised in 2010, preamble article 4(1), with additional references to the solitary leadership system in articles 2, 5, 28, 33, 40, 45, 48 and 53.

[1651] "Supreme Leader Kim Jong-un's New Year Address", *KCNA*, 1 January 2014, available from http://www.kcna.kp/kcna.user.article.retrieveNewsViewInfoList.kcmsf#this.

[1652] During Kim Il-sung's rule, the Organization and Guidance Department of the Central Committee, which was headed by his son and successor Kim Jong-il, was particularly influential. In the late stages of Kim Jong-il's rule and the first two years of Kim Jong-un's rule, the Administration Department, then headed by Kim Jong-il's brother-in-law Jang Song-thaek, was said to be particularly influential.

Kim Il-sung and Kim Jong-il both held the title of General Secretary and also served on the Standing Committee of the Political Bureau. Since the title of "eternal General Secretary of the Party" was retained for the late Kim Jong-il, Kim Jong-un's assumed the formal title of the First Secretary of the Workers' Party, which is functionally equivalent to that of General Secretary. He is a member of the Standing Committee of the Political Bureau. Furthermore, Kim Jong-un also chairs the Central Military Commission, through which the Party oversees the KPA.[1653]

1188. Nominally, the National Party Congress is the supreme organ of the Party.[1654] It is supposed to elect the members of the Central Committee, who in turn elect its Political Bureau. However, in practice, these organs have only served to legitimize the authority of the Supreme Leader and his larger policies. This is also evidenced by the fact that the National Party Congress has only convened six times, the last time dating back to 1980. The plenary of the Central Committee appears not to have been convened between 1993 and 2010, when Kim Jong-il was in power. The Party structures seem to have been reinvigorated to some extent to legitimize the transfer of power to Kim Jong-un. In particular, the Political Bureau of the Central Committee organized the third and fourth Party Conference, held in 2010 and 2012, which affirmed the transmission of key positions in the state and Party to Kim Jong-un. The decision to purge Jang Song-thaek and his supporters, the most important publicly announced shift of power since Kim Jong-un became Supreme Leader, was presented as a formal decision of the enlarged meeting of the Political Bureau of the Workers' Party.[1655]

8. National Defence Commission

1189. The National Defence Commission was established in 1972. It gained an increasingly prominent role once Kim Jong-il emerged as the heir apparent to Kim Il-sung and ascended to power. Kim Jong-il gradually strengthened the National Defence Commission as part of his Military First (*songun*) policy that shifted decision-making power to officials who had their power base primarily in the military and security apparatus. This shift is reflected in the present DPRK Constitution. The Constitution recognizes the National Defence Commission as the supreme defence leadership body of state power.[1656] The Commission also confirms that the Chairman of the National Defence Commission, a position first held by Kim Jong-il and, since 2012, by Kim Jong-un, is considered the Supreme Leader of the DPRK.[1657]

1190. The National Defence Commission's functions not only extend to matters of defending the country from external threats, but also internal state security. Therefore, the State Security Department, the Korean People's Army and the Ministry of People's Security are all housed under the National Defence Commission. The National Defence Commission outranks the actual Cabinet chaired by a Prime Minister. This Constitution empowers the National Defence Commission to abrogate any decisions and directives of state organs which run counter to its own decisions and directives.[1658]

[1653] See Charter of the Workers' Party of Korea, article 22.

[1654] See Charter of the Workers' Party of Korea, article 21.

[1655] See "Report on Enlarged Meeting of Political Bureau of Central Committee of WPK", *KCNA*, 9 December 2013. Available from http://www.kcna.co.jp/item/2013/201312/news09/20131209-05ee.html.

[1656] DPRK Constitution, article 109.

[1657] DPRK Constitution, article 100. Kim Jong-un was formally elected to the position of First Chairman by the Supreme People's Assembly in April 2012. See "Kim Jong-un Elected First Chairman of NDC of DPRK", *KCNA*, 13 April 2013. Available from http://www.kcna.co.jp/item/2012/201204/news13/20120413-44ee.html. The designation as 'First' Chairman apparently results from the act that the late Kim Jong-il is considered to remain the eternal Chairman of the National Defence Commission.

9. The Supreme Leader

1191. Apart from exercising power through his dominant role in the Party and the National Defence Commission, the Supreme Leader also acts as an autonomous decision-making institution. Former officials of the DPRK who provided testimony to the Commission underlined that orders issued by the Supreme Leader are considered the highest type of normative command, overruling decisions of all other Party or state institutions.[1659] The Constitution provides the normative underpinning by stipulating that the Supreme Leader, in his capacity as Chairman of the National Defence Commission, "directs the overall affairs of state" (i.e. including matters not related to national defense). The Supreme Leader also has the constitutional power to issue orders. Such orders are superior in their power to, and abrogate the decisions of any other organ of state.[1660] During Kim Jong-il's reign a practice was apparently introduced of Party departments and ministries presenting reports directly to the Supreme Leader. If the Supreme Leader personally signed them, their contents were considered personal instructions of the Supreme Leader.[1661]

1192. In his capacity as Chairman of the National Defence Commission, the Supreme Leader also serves as the Supreme Commander of the Armed Forces of the DPRK. Furthermore, he has the power to appoint and remove key cadres in the field of national defence. [1662] Kim Il-sung, Kim Jong-il and Kim Jong-un have used this power and replaced leading officials of the SSD, MPS and KPA on numerous occasions, so as to ensure that only people enjoying their personal confidence and trust are in positions of power. Throughout the course of its inquiry, the Commission was not able to identify a single occasion, in which such official was dismissed due to his agency being implicated in gross human rights violations or crimes against humanity. In reality, former officials of the DPRK testified before the Commission about a number of instances and operations, in which gross human rights violations that formed part of patterns entailing crimes against humanity were apparently directly ordered from the level of the Supreme Leader.[1663] On some occasions, the SSD, MPS, and KPA also received orders to form ad hoc structures from the Supreme Leader to target particular individuals or groups.[1664] In many of these instances, the agencies had to submit detailed reports on the implementation of actions involving gross human rights violations to the Supreme Leader.[1665]

10. Principal findings of the commission

1193. The Commission finds that the DPRK is a state where the commission of human rights violations and crimes against humanity is ingrained into the institutional framework.

[1658] DPRK Constitution, article 109.

[1659] TAP024, TLC037.

[1660] DPRK Constitution, articles 103 and 109.

[1661] Submission to the Commission: SUB061 (from a former official), TLC022, TLC040, TGC004, TBG025. A similar reporting practice was reportedly continued at least during the initial stages of Kim Jong-un's rule. See Ken E. Gause, "North Korean Leadership Dynamics and Decision-making under Kim Jong-un".

[1662] DPRK Constitution, articles 102 and 103.

[1663] Testimony from former officials TBG025, TBG027, TBG029, TBG031, TGC004, TJH015, TJH044, TLC022, TLC040, TLC041, TLC044, TSH059.

[1664] Former officials TBG031, TLC041, TCC014. See also section IV.A.2 (c), IV.C.1 (a) and IV.C.2.

[1665] TGC004, TJH015.

The State Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the judiciary and the Workers' Party of Korea are implicated in human rights violations and crimes against humanity. They are acting under the effective control of the leadership of the Workers' Party of Korea, the National Defence Commission and the Supreme Leader of the Democratic People's Republic of Korea.

1194. The Commission therefore finds that ensuring institutional accountability in the DPRK requires profound institutional reforms starting at the very top and centre of the nation's institutions. Entire structures of surveillance, indoctrination and repression that serve the sole purpose of committing human rights violations must be dismantled. In this regard, reform of the security and justice sector alone would not be enough, but the decision-making process underpinning them must be made more transparent and subject to effective checks and balances. The Commission also finds that the economic system must be restructured so that provision of the basic needs of the population on a non-discriminatory basis becomes possible. Accountability, non-discrimination, participation of citizens in decision-making processes, prioritization of the plight of the most vulnerable, the use of maximum available resources and other principles discussed in this report must be foremost in considering the state's policies and programmes. To bring the state into compliance with its obligations under international human rights law, the state must take active measures to ensure the enjoyment of economic, social and cultural rights of all the people. In this regard, special measures have to be taken to address the severe socio-economic disparities and the related discriminatory socio-economic structures that have benefitted a small elite, many of whom are directly implicated in the organization of crimes against humanity.

B. Individual criminal accountability

1195. The prohibition of crimes against humanity forms part of the body of peremptory norms (*jus cogens*) that bind the entire international community as a matter of customary international law.[1666] Individuals who commit crimes against humanity in the DPRK may therefore be held responsible on the basis of international customary law, even though the DPRK has not yet included crimes against humanity in its domestic criminal law and is not a State party to the Rome Statute of the International Criminal Court (Rome Statute).[1667] The Commission also recalls the established principle of international law that perpetrators of crimes against humanity are not relieved of criminal responsibility on the basis that they have acted on superior orders, because orders to commit crimes of such gravity are manifestly unlawful.[1668]

1196. Where testimony or other information received by the Commission indicated the names of individuals who committed, ordered, solicited or aided and abetted crimes against humanity, these have been duly recorded. This was also done where the Commission could ascertain the names of individuals who headed particular departments, prison camps or institutions implicated in crimes against humanity. Relevant information has been safeguarded in the Commission's confidential database. The Commission has authorized the High Commissioner for Human Rights, acting as the residual Secretariat of the Commission, to provide access to such information to competent authorities that carry out credible investigations for the purposes of ensuring accountability for crimes and other violations committed, establishing the truth about violations committed or implementing United Nations-mandated targeted sanctions against particular individuals or institutions. The Commission has requested the High Commissioner to grant access only to the extent that witnesses or other sources of information concerned have given their informed consent and that any protection and operational concerns are duly addressed.

[1666] See International Law Commission, "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries", 2001, p. 85; M. Cherif Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application*, pp. 263 ff.

[1667] A trial of alleged perpetrators based on the prohibition under international law would not constitute a breach of the prohibition of the retrospective application of criminal offenses. See ICCPR, article 15 (2).

[1668] See Rome Statute, article 33. See also Charter establishing the Nuremberg Tribunal, article 8; *United States v. Wilhelm List et al*, XI Reports of Trials of War Criminals (1950), p. 1236; *United States v. Erhard Milch*, VII Reports of Trials of War Criminals (1947), p. 42.

1197. On 16 December 2013, the Commission wrote a letter to the People's Republic of China, in which it summarized its concerns relating to China's policy and practice of forced repatriation of DPRK citizens. The Commission expressed particular concern about Chinese officials providing specific information on such persons to DPRK authorities.[1669] The Commission urged the Government of China to caution relevant officials that such conduct could amount to the aiding and abetting of crimes against humanity where repatriations and information exchanges are specifically directed towards or have the purpose of facilitating the commission of crimes against humanity in the DPRK.

1198. On 20 January 2014, the Commission wrote a letter to Kim Jong-un, Supreme Leader of the Democratic People's Republic of Korea, sharing with him the entirety of findings contained in this report.[1670] The Commission drew to the Supreme Leader's attention the principles of command and superior responsibility under international criminal law, according to which military commanders and civilian superiors can incur personal criminal responsibility for failing to prevent and repress crimes against humanity committed by persons under their effective control.[1671] In light of his capacities as Supreme Leader of the Democratic People's Republic of Korea, First Secretary of the Workers' Party of Korea and Chairman of the Party's Central Military Commission, First Chairman of the National Defence Commission and Supreme Commander of the Korean People's Army, the Commission made Supreme Leader Kim aware of its finding that officials of the state Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the Special Military Court and other courts and the Workers' Party of Korea are committing crimes against humanity, acting under the effective control of the central organs of the Workers' Party of Korea, the National Defence Commission and, ultimately, the Supreme Leader. The Commission urged Supreme Leader Kim Jong-un to take all necessary and reasonable measures within his power to prevent or repress the commission of further crimes and to submit cases of crimes committed to the competent authorities for investigation and prosecution.

1199. At this stage, crimes against humanity are committed with impunity in the DPRK. This is to be expected considering that crimes against humanity appear to have been based on decisions and policies approved at the highest level of the state. In the absence of profound institutional reforms in the DPRK, the Commission finds that the DPRK's own institutions are neither willing nor able to effectively investigate and prosecute crimes against humanity, as they would be required under international law. In this situation, it becomes incumbent on the international community to step in and ensure that the perpetrators are brought to justice.[1672]

[1669] The letter is reproduced in Annex II of the Commission report (A/HRC/25/63). An unedited version of the detailed findings reflected in the present document was shared with the People's Republic of China for information and comments on 20 January 2014.

[1670] The letter is reproduced in Annex I of the Commission report (A/HRC/25/63).

[1671] The legal requirements of this principle are set out in the Rome Statute, article 28.

1200. The Commission finds that an international court or tribunal must be given jurisdiction, without delay, to address the long-standing and ongoing commission of crimes against humanity perpetrated in the Democratic People's Republic of Korea. The international community, acting through the United Nations and consistent with its responsibility to protect, should make provisions to ensure that those most responsible for crimes against humanity in the DPRK are prosecuted before an international court and brought to justice.

1201. Two suitable options, neither of which depends on the consent of the DPRK, should be envisaged:

1) The Security Council could refer the situation in the Democratic People's Republic of Korea to the International Criminal Court based on article 13 (b) of the Rome Statute and Chapter VII of the Charter of the United Nations. Handing the case to the International Criminal Court has the practical advantage that an established institutional framework, rules of procedure, and professional staff are already in place, and impunity enjoyed by those most responsible for crimes against humanity could be addressed without further delay. In the event of a referral to the ICC, its jurisdiction would not extend to crimes committed before July 2002. However, many of those most responsible for crimes committed before 2002 may no longer be alive or able to stand trial. [1673]

2) Alternatively, the United Nations could set up an ad hoc International Tribunal for the Democratic People's Republic of Korea. Such an ad hoc Tribunal could be provided with jurisdiction dating back before July 2002 and thereby comprehensively address crimes against humanity in the DPRK. However, this would require substantial resource commitments and institutional planning, leading to a further delay in bringing perpetrators to justice. In line with the existing precedents that led to the establishment of the International Criminal Tribunals for Yugoslavia and Rwanda (ICTY and ICTR),[1674] the Security Council could set up such a tribunal using its powers under Chapter VII of the Charter of the United Nations. In the event that the Security Council fails to refer the situation to the ICC or set up an ad hoc

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[1672] International law of state responsibility requires states to cooperate to bring to an end through lawful means any breach of peremptory international law (*jus cogens*). See article 41 of the Articles on State Responsibility, which were adopted by the International Law Commission and commended to the attention of States by General Assembly Resolution resolution 56/83 of 12 December 2001. A State's failure to exercise the duty to bring to justice perpetrators of crimes against humanity amounts to a violation of peremptory international law (*jus cogens*).

[1673] See Rome Statute, article 24. The Rome Statute entered into force on 1 July 2002. In the case of enforced disappearances, although they are continuous crimes, the Elements of Crimes of the Rome Statute explicitly requires that the initial abduction or other deprivation of liberty would have to have taken place after July 2002. See Elements of Crimes, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess., Sept. 3–10, 2002, article 7(1)(i), footnote 24. The Commission notes, however, that no such jurisdictional limits applies to the crime against humanity of imprisonment and other severe deprivations of liberty in violation of fundamental rules of international law, which are often also committed in connection with international abductions. On this basis, crimes against humanity related to the international abductions could potentially fall under the jurisdiction of the ICC.

[1674] See Security Council Resolutions 827 (1993) and 955 (1994).

tribunal, the General Assembly could establish a tribunal. In this regard, the General Assembly could rely on its residual powers recognized inter alia in the "Uniting for Peace" resolution[1675] and the combined sovereign powers of all individual Member States to try perpetrators of crimes against humanity on the basis of the principle of universal jurisdiction.[1676]

1202. The Commission considered three other options, but found none of them suitable under the prevailing circumstances in the Democratic People's Republic of Korea:

1) In other situations where crimes against humanity were committed, hybrid courts involving international and national prosecutors and judges have been established.[1677] However, these models rely on the consent of the state concerned. Even if the DPRK were to provide such consent, the Commission takes the view that, in the absence of profound reforms to the DPRK's political and justice system, any DPRK judges designated to participate in such a hybrid court would lack the impartiality and independence necessary to carry out criminal trials that would likely involve very senior officials as defendants.[1678]

2) A special international prosecutor's office for the Democratic People's Republic of Korea could be established by the Security Council or the General Assembly. If such a prosecutor was created, it would be unclear in which court such a prosecutor would file indictments of identified suspects. The Commission notes in this regard that functions of a prosecutor's office as a stop-gap measure to secure witness testimony and other information until a court can exercise jurisdiction, could also be carried out by a non-prosecutorial documentation structure established by the High Commissioner for Human Rights and following similar methods of work as the Commission of Inquiry.[1679] Such a non-prosecutorial structure would also suitably complement the work of the ICC or that of an ad hoc international tribunal.

3) The Commission considered the option of a truth and reconciliation mechanism that would allow those most responsible to cease their involvement in any crimes and be spared prosecution in exchange for telling the entire truth about their involvement in crimes committed.[1680] The Commission finds that such an approach would be eminently unsuitable to a

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[1675] General Assembly resolution 377 A (V) of 3 November 1950.

[1676] The General Assembly already took a role in the establishment of the Extraordinary Chambers of the Court of Cambodia. General Assembly resolution 57/228(B) of 13 May 2003 approved the agreement of 6 June 2003 between the Royal Government of Cambodia and the United Nations that led to the establishment of these chambers.

[1677] Notable examples are the Special Court for Sierra Leone and the Extraordinary Chambers of the Courts of Cambodia.

[1678] See in this regard the findings on the lack of independence and impartiality of the judicial process in the DPRK contained in sections III.E and IV.E.4 (a).

[1679] During the course of its work, the Commission discovered that a steady stream of first-hand information on the human rights situation is emerging from the Democratic People's Republic of Korea, notably through those who are fleeing and direct contacts facilitated by modern technology. However, building the trust necessary to gather such information takes steady engagement with relevant actors on the ground, which cannot be sustained based on the headquarters-based approach pursued by the United Nations so far in relation to the DPRK.

[1680] This approach was pursued in South Africa through its Truth and Reconciliation Commission, although most of the alleged main perpetrators of crimes committed in Apartheid South Africa were no longer in power when that commission took up its work.

> situation where crimes against humanity are being committed unabated. Amnesty for the main culprits of crimes of such enormity would also constitute an affront to the victims and their families. Furthermore, the deterrent effect that the prospect of criminal accountability can have on future crimes would be lost. The Commission also notes that amnesties for crimes against humanity are no longer permitted by international law, in particular regarding those most responsible for such crimes.[1681]

1203. The international community can necessarily only ensure accountability for a limited number of main perpetrators. Once a process to carry out profound political and institutional reforms within the DPRK is underway, a parallel Korean-led transitional justice process becomes an urgent necessity. At this stage, a domestic special prosecutor's office, relying on international assistance to the extent necessary, should be established to lead prosecutions of perpetrators of humanity. The process needs to encompass extensive, nationally owned truth seeking and vetting measures to expose and disempower perpetrators at the mid- and lower-levels. This process needs to be coupled with comprehensive human rights education campaigns to change the mind-sets of an entire generation of ordinary citizens who have been kept in the dark about what human rights they are entitled to enjoy and in how many ways their own state has violated them.

C. Responsibility of the international community

1204. The Commission's findings, which indicate that a Member State of the United Nations has committed crimes against humanity over a span of several decades, raises questions regarding the accountability of the international community. The Commission recalls that the leaders gathered at the 2005 World Summit of Heads of State and Governments reaffirmed that each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In addition, world leaders committed themselves to upholding the complementary responsibility to protect held by the international community:

> The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[1682]

[1681] See also *Prosecutor v Kallon and Kamara*, SCSL-04-15AR72(E), SCSL-04-16-AR72(E) [SCSL Appeals Chamber], Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, of 13 March 2004, para. 73; *Barrios Altos v. Peru*, (Ser. C) No. 75 [Inter-American Court of Human Rights], Int.Am. Ct. H.R, Judgment of March 14 2001, para. 41.

[1682] See World Summit Outcome Document A/RES/60/1, para. 139. A corresponding legal obligation is also emerging under the International Law of State Responsibility, which obligates states to cooperate to bring to an end any serious breach by a state of an obligation arising under a peremptory norm of general international law. See articles 40 and 41 of the International Law Commission's "Draft Articles on Responsibility of States for Internationally Wrongful Acts", which the General Assembly commended to the attention of States through Resolution 56/83 of 12 December 2001. Crimes against humanity, war crimes, ethnic cleansing and genocide amount to such breaches of peremptory law.

1205. In light of the manifest failure of the DPRK to protect its population from crimes against humanity, the international community, through the United Nations, bears the responsibility to protect the population of the DPRK from crimes against humanity using first and foremost appropriate diplomatic, humanitarian and other peaceful means. The responsibility of the international community is further warranted by the fact that the DPRK's crimes against humanity impact many persons from other states, who were systematically abducted and who continue to suffer enforced disappearance, along with the families they left behind. In a number of these cases, the abductions involved blatant violations of the territorial sovereignty of other states.

1206. The Commission notes that the General Assembly, the Human Rights Council, the Economic and Social Council's Commission on Human Rights, the Secretary-General and the High Commissioner for Human Rights have made significant peaceful efforts to engage with the DPRK to end the gross human rights violations that are at the root of crimes against humanity in the DPRK. Meanwhile, the Security Council has limited its engagement on the Korean peninsula to issues of nuclear non-proliferation and military incidents, without fully appreciating that a meaningful improvement of the internal human rights situation would also reduce the DPRK's propensity to assume a bellicose external stance.

1207. For nine consecutive years the General Assembly passed a resolution urging the DPRK to end gross human rights violation. The Human Rights Council and the Commission on Human Rights preceding it also passed resolutions condemning the on-going grave, widespread and systematic human rights violations. On the basis of these resolutions, the Secretary-General, the High Commissioner for Human Rights and successive Special Rapporteurs on the Situation of Human Rights in the Democratic Republic of Korea, have submitted detailed reports further detailing human rights concerns. Over time, international awareness and concern about the situation has grown to such an extent that the most recent resolutions of the General Assembly and the Human Rights Council have been passed without vote. In particular, the establishment of this commission without a vote, through Resolution 22/13, is unprecedented.

1208. The peaceful efforts taken so far have proved inadequate as the Democratic People's Republic of Korea has defied the united stance of the international community as embodied in the General Assembly and its Human Rights Council. The DPRK has rejected the General Assembly and Human Rights Council resolutions variably as "*a ridiculous attempt to infringe upon the sovereignty of the DPRK and do harm to its dignified socialist system by abusing human rights for a sinister political purpose*" and as "*a political chicanery which does not deserve even a passing note*".[1683] Furthermore, the DPRK refused to cooperate with the mechanisms established in accordance with these resolutions and most other United Nations human rights mechanisms for that matter[1684]. The Commission considers that this open defiance of the United Nations makes this a case where decisive, yet carefully targeted action should be taken by the Security Council in support of the ongoing efforts of the remainder of the United Nations system.

[1683] "DPRK Foreign Ministry Spokesman Flays Hostile Forces' Adoption of 'Human Rights Resolution' against DPRK", *KCNA*, 20 November 2013. Available from http://www.kcna.co.jp/item/2013/201311/news20/20131120-21ee.html; "UN Human Rights Council's 'Resolution on Human Rights' against DPRK Rejected by DPRK FM Spokesman", *KCNA*, 20 March 2013. Available from http://www.kcna.co.jp/item/2013/201303/news22/20130322-39ee.html. Language of a comparable kind was used in relation to past resolutions.

[1684] See section II.2 for details on the DPRK's lack of cooperation with United Nations human rights mechanisms.

1209. Responsibility must also be assumed by the United Nations System consisting of Secretariat entities and United Nations agencies. In December 2013, the Secretary-General launched the "Rights up Front" initiative to improve the way the United Nations system addresses situations where populations are at risk of serious human rights violations. Rights up Front includes commitments to a more coherent approach to coordination of the United Nations response, and strengthening of dialogue and engagement with the inter-governmental organs of the United Nations, including by providing candid information about the human rights situation.[1685] The Commission finds that the gravity of the human rights situation in the DPRK warrants the adoption and full implementation of a Rights Up Front strategy on the part of the United Nations System.

1210. The people of the Democratic People's Republic of Korea have suffered too long. It is the responsibility of the international community to protect them from the depredations of their own government. The Commission finds that the international community must discharge its responsibility to protect by pursuing a multi-faceted strategy that combines strong accountability measures targeting those most responsible for crimes against humanity, reinforced human rights engagement with the authorities of the Democratic People's Republic and support for incremental change based on people-to-people dialogue and an agenda for inter-Korean reconciliation.[1686]. The Commission has developed a set of recommendations to the international community that elaborate on this approach. These recommendations are set out in the Commission's principal report.

VII. Conclusions and recommendations

1211. **Systematic, widespread and gross human rights violations have been, and are being, committed by the Democratic People's Republic of Korea, its institutions and officials. In many instances, the violations of human rights found by the Commission constitute crimes against humanity. These are not mere excesses of the state. They are essential components of a political system that has moved far from the ideals on which it claims to be founded. The gravity, scale and nature of these violations reveal a state that does not have any parallel in the contemporary world. Political scientists of the 20th century characterized this type of political organization as a totalitarian state: A state that does not content itself with ensuring the authoritarian rule of a small group of people, but seeks to dominate every aspect of its citizens' lives and terrorizes them from within.**

1212. **The Democratic People's Republic of Korea displays many attributes of a totalitarian state: the rule of a single party, led by a single person, is based on an elaborate guiding ideology that its current Supreme Leader refers to as "Kimilsungism-Kimjongilism". The state seeks to ensure that its citizens internalize this guiding ideology by indoctrinating citizens from childhood, suppressing all political and religious expression that questions the official ideology, and tightly controlling citizens' physical movement and their means of communication with each other and with those in other countries. Discrimination on the basis of gender and songbun is used to maintain a rigid social structure that is less likely to produce challenges to the political system.**

[1685] For more details on this initiative see http://www.un.org/sg/rightsupfront/.

[1686] See in this regard, the recommendations to the international community in the Commission's report, which the Commission set out in accordance with Human Rights Council Resolution 13/22, read in conjunction with paragraph 31 of the report of the Special Rapporteur on human rights situation in the Democratic People's Republic of Korea.

1213. **The state's monopolization of access to food has been used as an important means to enforce political loyalty. The distribution of food has prioritized those who are useful to the survival of the current political system at the expense of those deemed to be expendable. Citizens' complete dependency on the state led to one of the worst cases of famine in recent history. The authorities have only recently come to tolerate the fact that markets can no longer be fully suppressed. However, instead of fully embracing reforms to realize the right to food, the Democratic People's Republic of Korea maintains a system of inefficient economic production and discriminatory resource allocation that inevitably produces more unnecessary starvation among its citizens.**

1214. **The keystone to the political system is the vast political and security apparatus that strategically uses surveillance, coercion, fear and punishment to preclude the expression of any dissent. Public executions and enforced disappearance to political prison camps serve as the ultimate means to terrorize the population into submission. The state's violence has been externalized through state-sponsored abductions and enforced disappearances of people from other nations. These international enforced disappearances are unique in their intensity, scale and nature.**

1215. **Today, the Democratic People's Republic of Korea finds itself surrounded by a world that is changing rapidly in political, economic and technological terms. These changes offer opportunities for incremental social change within the state. In response, the authorities engage in gross human rights violations so as to crack down on 'subversive' influences from abroad. These influences are symbolized by films and soap operas from the Republic of Korea and other countries, short-wave radio broadcasts and foreign mobile telephones. For the same reason, the state systematically uses violence and punishment to deter its citizens from exercising their human right to leave the country. Persons who are forcibly repatriated from China are commonly subjected to torture, arbitrary detention, summary execution, forced abortions and other sexual violence.**

1216. **A number of long-standing and ongoing patterns of systematic and widespread violations, which were documented by the Commission, meet the high threshold required for proof of crimes against humanity in international law. The perpetrators enjoy impunity. The Democratic People's Republic of Korea is unwilling to implement its international obligation to prosecute and bring the perpetrators to justice, because those perpetrators act in accordance with State policy.**

1217. **The fact that the Democratic People's Republic of Korea, as a State Member of the United Nations, has for decades pursued policies involving crimes that shock the conscience of humanity raises questions about the inadequacy of the response of the international community. The international community must accept its responsibility to protect the people of the Democratic People's Republic of Korea from crimes against humanity, because the government of the Democratic People's Republic of Korea has manifestly failed to do so. In particular, this responsibility must be accepted in the light of the role played by the international community (and by the great powers in particular) in the division of the Korean peninsula and because of the unresolved legacy of the Korean War. These unfortunate legacies help not only to explain the intractability of the human rights situation but also why an effective response is now imperative.**

1218. **The United Nations must ensure that those most responsible for the crimes against humanity committed in the Democratic People's Republic of Korea are held accountable. Options to achieve this end include a Security Council referral of the situation to the International Criminal Court or the establishment of an ad hoc tribunal by the United Nations. Urgent accountability measures should be combined**

with a reinforced human rights dialogue, the promotion of incremental change through more people-to-people contact and an inter-Korean agenda for reconciliation.

1219. **On the basis of its findings and conclusions, the Commission makes the following recommendations.**

1220. **The commission of inquiry recommends that the Democratic People's Republic of Korea:**

(a) Undertake profound political and institutional reforms without delay to introduce genuine checks and balances upon the powers of the Supreme Leader and the Workers' Party of Korea. Such changes must include an independent and impartial judiciary, a multi-party political system and elected people's assemblies at the local and central level that emerge from genuinely free and fair elections. Reform the security sector by vetting the entire officers' corps for involvement in human rights violations and by limiting the functions of the Korean People's Army to defending the nation against external threats. Dismantle the State Security Department and place the Ministry of Public Security under transparent democratic oversight. An independent constitutional and institutional reform commission, consisting of respected members of society in the Democratic People's Republic of Korea, should be constituted to guide this process and should be assisted by appropriate international experts.

(b) Acknowledge the existence of the human rights violations, including political prison camps described in the present report. Provide international humanitarian organizations and human rights monitors immediate access to the camps and their surviving victims. Dismantle all political prison camps and release all political prisoners. Clarify with full detail the fate of any disappeared persons who cannot be readily traced.

(c) Reform the Criminal Code and Code of Criminal Procedure to abolish vaguely worded "anti-state" and "anti-people" crimes and to fully enshrine the right to a fair trial and due process guarantees articulated in the International Covenant on Civil and Political Rights. Enforce existing provisions in the Criminal Code and Code of Criminal Procedure that prohibit and criminalize the use of torture and other inhuman means of interrogation that are illegal under international law. Reform the ordinary prison system so as to ensure humane conditions of detention for all inmates deprived of liberty. End the reprisals against persons on the basis of guilt by association. Abolish immediately the practice of forcibly resettling the families of convicted criminals.

(d) Declare and implement an immediate moratorium on the imposition and execution of the death penalty, followed without undue delay by the abolition of the death penalty both in law and practice.

(e) Allow the establishment of independent newspapers and other media. Allow citizens to freely access the internet, social media, international communications, foreign broadcasts and publications, including the popular culture of other countries. Abolish compulsory participation in mass organizations and indoctrination sessions.

(f) Introduce education to ensure respect for human rights and fundamental freedoms. Abolish any propaganda or educational activities that espouse national, racial or political hatred or war propaganda.

(g) Allow Christians and other religious believers to exercise their religion independently and publicly without fear of punishment, reprisal or surveillance.

(h) End discrimination against citizens on the basis of their perceived political loyalty or the socio-political background of their families, including in matters of access to education and employment. Dismantle the neighbourhood watch system (*Inminban*), the secret resident registration file system, and all surveillance of persons and their communications that serve purposes of political oppression and/or are not subject to effective judicial and democratic control. Publicly acknowledge the extent of surveillance practices carried out in the past and provide citizens with access to their resident registration file.

(i) Take immediate measures to ensure gender equality in practice, such as by providing equal access for women in public life and employment. Eradicate discriminatory laws, regulations and practices affecting women. Take measures to address all forms of violence against women, including domestic violence, sexual and gender-based violence by state agents and/or within state institutions. Respond immediately and effectively to trafficking in women. Address the structural causes that make women vulnerable to such violations.

(j) Ensure that citizens can enjoy the right to food and other economic and social rights without discrimination. Pay particular attention to the needs of women and vulnerable groups such as street children, the elderly and persons with disabilities. Promote agricultural, economic and financial policies based on democratic participation, good governance, and non-discrimination. Legalize and support free market activities, internal and external trade and other independent economic conduct that provide citizens with livelihoods.

(k) In light of the past expenditures by the leadership, the military and security apparatus, realign priorities and dedicate available resources, as necessary, to ensure freedom from hunger and other essential minimum standards for citizens, including those citizens serving in the armed forces.

(l) Where necessary to ensure the right to food, seek international humanitarian assistance without delay. Provide international humanitarian organizations with free and unimpeded access to all populations in need, including for the purposes of effective monitoring. Hold accountable state officials who illegally divert humanitarian aid for improper purposes.

(m) Abolish the de facto prohibition on foreign travel imposed on ordinary citizens. Decriminalize illegal border crossings and introduce border controls that conform to international standards. Renounce orders to shoot and kill at the border. Cease to regard citizens repatriated from China as political criminals or to subject them to imprisonment, execution, torture, arbitrary detention, deliberate starvation, illegal cavity searches, forced abortions and other sexual violence. Abolish the state's compulsory designation of places of residence and employment as well as the requirement to obtain a permit for domestic travel outside a person's designated province.

(n) Provide the families and nations of origin of all persons who have been abducted, or otherwise forcibly disappeared, with full information on their fate and whereabouts if they have survived. Allow those who remain alive, and their descendants, to return immediately to their countries of origin. In close cooperation with their families and nations of origin, identify and repatriate the physical remains of those who have died.

(o) Allow separated families to unite, including by allowing citizens to travel or emigrate where they choose. Immediately provide such persons with facilities for unmonitored communications by way of mail, telephone, email and any other means of communication.

(p) Prosecute and bring to justice those persons most responsible for alleged crimes against humanity. Appoint a special prosecutor to supervise this process. Ensure that victims and their families are provided with adequate, prompt and effective reparation and remedies, including by knowing the truth about the violations that have been suffered. Launch a people-driven process to establish the truth about the violations. Provide adults and children with comprehensive education on national and international law and practice on human rights and democratic governance. Seek international advice and support for transitional justice measures.

(q) Take immediate steps to end all other human rights violations and to address the human rights concerns raised in this report, as well as in successive resolutions of the General Assembly and the Human Rights Council, in the procedures of Universal Periodic Review and in the reports of Special Procedures and Treaty Bodies.

(r) Ratify without delay the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the Rome Statute of the International Criminal Court and the fundamental conventions of the International Labour Organization.

(s) Accept immediately a field-based presence and technical assistance from the Office of the High Commissioner for Human Rights and other relevant United Nations entities to help implement these recommendations.

1221. The commission of inquiry recommends that China and other States:

(a) Respect the principle of *non-refoulement*. Accordingly, abstain from forcibly repatriating any persons to the Democratic People's Republic of Korea, unless the treatment there, as verified by international human rights monitors, markedly improves. Extend asylum and other means of durable protection to persons fleeing the Democratic People's Republic of Korea who need international protection. Ensure that such persons are fully integrated and duly protected from discrimination. Stop providing information on activities and contacts of persons from the Democratic People's Republic of Korea living in China to the State Security Department and other security agencies in the Democratic People's Republic of Korea. Allow persons from the Democratic People's Republic of Korea free access to diplomatic and consular representations of any state that may be willing to extend nationality or other forms of protection to them.

(b) Provide the United Nations High Commissioner for Refugees, and relevant humanitarian organizations, full and unimpeded access to all persons from the Democratic People's Republic of Korea seeking such contact.

(c) Request technical assistance from the United Nations to help meet the obligations imposed under international refugee law and ensure the effective protection of persons from trafficking.

(d) Adopt a victim-centric and human rights-based approach to trafficking in persons, including by providing victims with the right to stay in the country and access to legal protection and basic services, such as medical treatment, education and employment opportunities equivalent to those afforded to their own citizens.

(e) Regularize the status of women and men from the Democratic People's Republic of Korea who marry or have a child with a Chinese citizen. Ensure that all such children can realize their rights to birth registration and Chinese nationality where applicable and access to education and healthcare without discrimination.

(f) Take immediate measures to prevent agents of the Democratic People's Republic of Korea from carrying out further abductions from Chinese territory. Prosecute and adequately punish apprehended perpetrators of abduction and demand the extradition of those giving such orders so that they may be tried in accordance with law. China should raise with the Supreme Leader of the Democratic People's Republic of Korea and other high-level authorities the issues of abductions, the infanticide of children entitled to Chinese nationality, forced abortions imposed on repatriated women and other human rights violations that target persons repatriated from China.

1222. The Commission recommends that the Korean People foster Inter-Korean dialogue_in a phased approach leading up to an Agenda for Reconciliation. Inter-Korean dialogue could be furthered through such initiatives as friendly sporting events; academic and business interactions; scholarships and apprenticeships for young people from the Democratic People's Republic of Korea; student exchanges; exchanges between civil society organizations including national Red Cross Societies; contacts between professional organizations and women's groups; the development of "sister city" relationships and, eventually, the reestablishment of transport and communication links.

1223. States and civil society organizations should foster opportunities for people-to-people dialogue and contact in such areas as culture, science, sports, good governance and economic development that provide citizens of the Democratic People's Republic of Korea with opportunities to exchange information and be exposed to experiences outside their home country. The Democratic People's Republic of Korea and other states should remove applicable obstacles to people-to-people contact, including measures that criminalize travel and contact to the extent that these are not in accordance with relevant obligations under international human rights law.

1224. States, foundations and engaged business enterprises should provide more support for the work of civil society organizations to improve the human rights situation in the Democratic People's Republic of Korea, including efforts to document human rights violations and to broadcast accessible information into each country. Eventually, and once conditions are deemed to be appropriate, such foundations and enterprises should join forces with concerned Governments to coordinate efforts to adopt a coherent plan for the development of the country, creation of livelihoods for the population and the advancement of the human rights situation.

1225. With regard to the international community and the United Nations, the Commission makes the following recommendations:

(a) The Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court for action in accordance with that court's jurisdiction. The Security Council should also adopt targeted sanctions against those who appear to be most responsible for crimes against humanity. In the light of the dire social and economic situation of the general population, the Commission does not support sanctions imposed by the Security Council or introduced bilaterally that are targeted against the population or the economy as a whole.

(b) The General Assembly and the Human Rights Council should extend the country-specific human rights monitoring and reporting mechanisms on the Democratic People's Republic of Korea that pre-date the establishment of the Commission. These include the periodic reports of the Secretary-General and the High Commissioner for Human Rights, as well as the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of

Korea. Such mechanisms should be mandated to focus on ensuring accountability, in particular for crimes against humanity, and should report on the implementation of the Commission's recommendations.

(c) The United Nations High Commissioner for Human Rights, with full support from the Human Rights Council and the General Assembly, should establish a structure to help to ensure accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity. The structure should build on the collection of evidence and documentation work of the Commission, and further expand its database. It should be field-based, supported by adequate personnel deployed to the region so as to enjoy sustained access to victims and witnesses. In addition to informing the work of human rights reporting mechanisms and serving as a secure archive for information provided by relevant stakeholders, the work of such a structure should facilitate United Nations efforts to prosecute, or otherwise render accountable, those most responsible for crimes against humanity.

(d) The High Commissioner for Human Rights should continue the OHCHR's engagement with the Democratic People's Republic of Korea, offering technical assistance and enhancing advocacy initiatives. The High Commissioner for Human Rights should facilitate the implementation of a strategy led by the Special Rapporteur and involving all concerned human rights mechanisms of the United Nations system, to address, coherently and without delay, the special issue of international abductions and enforced disappearances and related matters described in this report. Member States should afford full cooperation to ensure the implementation of such a strategy.

(e) The High Commissioner should periodically report to the Human Rights Council and other appropriate United Nations organs on the implementation of the recommendations contained in the Commission's report.

(f) The Human Rights Council should ensure that the conclusions and recommendations of the Commission do not pass from the active attention of the international community. Where so much suffering has occurred, and is still occurring, action is the shared responsibility of the entire international community.

(g) The United Nations Secretariat and agencies should urgently adopt and implement a common "Rights up Front" strategy to ensure that all engagement with the Democratic People's Republic of Korea effectively takes into account, and addresses, human rights concerns including those collected in this report. The United Nations should immediately apply this strategy to help prevent the recurrence or continuation of crimes against humanity in the Democratic People's Republic of Korea. The strategy should contemplate the possibility of the Secretary-General referring the situation to the Security Council.

(h) States that have historically friendly ties with the Democratic People's Republic of Korea, major donors and potential donors, as well as those states already engaged with the Democratic People's Republic of Korea in the framework of the Six-Party Talks, should form a human rights contact group to raise concerns about the situation of human rights in the Democratic People's Republic of Korea and to provide support for initiatives to improve the situation.

(i) States should not use the provision of food and other essential humanitarian assistance to impose economic or political pressure on the Democratic People's Republic of Korea. Humanitarian assistance should be provided in accordance with humanitarian and human rights principles, including the principle of non-discrimination. Aid should only be curbed to the extent that unimpeded

international humanitarian access and related monitoring is not adequately guaranteed. Bilateral and multilateral providers of assistance should coordinate their efforts to ensure that adequate conditions of humanitarian access and related monitoring are provided by the Democratic People's Republic of Korea.

(j) Without prejudice to all the obligations under international law that the Democratic People's Republic of Korea must immediately implement, the United Nations and the states that were parties to the Korean War should take steps to convene a high-level political conference. Participants in that conference should consider and, if agreed, ratify a final peaceful settlement of the war that commits all parties to the principles of the Charter of the United Nations, including respect for human rights and fundamental freedoms. States of the region should intensify their cooperation and consider following such examples as the Helsinki Process.